AND
REFS

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Nos. 16-74, 16-86, 16-258

IN THE

Supreme Court of the United States

ADVOCATE HEALTH CARE NETWORK, ET AL., *Petitioners*,
v.
MARIA STAPLETON, ET AL., *Respondents*.

SAINT PETER'S HEALTHCARE SYSTEM, ET AL., *Petitioners*,
v.
LAURENCE KAPLAN, *Respondent*.

DIGNITY HEALTH, ET AL., *Petitioners*,
v.
STARLA ROLLINS, *Respondent*.

On Writs of Certiorari to the Third, Seventh, and Ninth Circuits

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QUESTION PRESENTED

The Employee Retirement Income Security Act of 1974 ("ERISA") provides significant protections for employees' pensions, but it includes an exemption for a "church plan." 29 U.S.C. §1003(b)(2). A "church plan" is a pension or welfare plan "established and maintained ... by a church," *id.* §1002(33)(A), which "includes" a plan "maintained" by a pension board or similar administrative organization controlled by or associated with a church, *id.* §1002(33)(C)(i). All three courts of appeals to consider the issue have concluded without dissent that the exemption does not extend to plans that were not "established ... by" a church, and that therefore pension plans established by giant health care providers like those involved here are not exempt from ERISA.

The question presented is:

Whether a pension plan for employees of a giant health-care provider is exempt from—and therefore its participants are unprotected by—ERISA, even though there is no genuine dispute that the plan was not "established" by a church.

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STATEMENT

The ERISA church plan exemption unambiguously requires that a church plan be "established ... by a church." 29 U.S.C. §1002(33)(A). Congress enacted that exemption—ERISA's *only* general exemption for plans of private employers—because it wanted to avoid government intrusion into a church's confidential books and records, especially the church's sensitive employment relationships with its clergy and others. Congress modestly expanded the exemption in 1980 to make permanent a temporary provision in the original statute allowing churches to include employees of their associated agencies in their church plans and to correct some other, technical problems.

Congress's rationale for exempting church plans did not extend to plans of firms, like those here, that are not churches. Subjecting petitioners' plans to ERISA, just like plans of petitioners' competitors and virtually every other private employer in the national economy, does not risk intrusion into a church's confidential books and records. No one suggested, and Congress never intended, to authorize petitioners' massive new loophole that would enable petitioners to provide uninsured, insecure, and substandard benefit plans to their tens of thousands of employees. Petitioners have no legitimate reliance interest arising from administrative letters that cannot be used or cited as precedent, that contain no detectable reasoning, and in which their employees had no opportunity for input.

1. Congress enacted ERISA "to ensure that employees will not be left empty-handed once employers

have guaranteed them certain benefits." *Lockheed Corp. v. Spink*, 517 U.S. 882, 887 (1996). Before ERISA, employers' pension promises were often illusory. Many employers made inadequate or delayed contributions; some even raided existing funds. Employers disclaimed any responsibility to pay promised pensions from general corporate assets and amended plans to cut back already earned benefits. Lengthy vesting periods often resulted in complete forfeiture for employees who left work before retirement. Employees had no enforceable rights to disclosure of plan terms and conditions, and claims procedures were often obscure and stacked to the employer's advantage. *See* 29 U.S.C. §1001(a); S. Rep. 93-127, at 8-11; S. Rep. 93-383, at 13-18.

ERISA imposes minimum funding requirements, 29 U.S.C. §§1082-83; prohibits employers from limiting their liability, 29 U.S.C. §1362; and requires the purchase of PBGC insurance as a backup, 29 U.S.C. §1307. ERISA also imposes minimum vesting standards, 29 U.S.C. §1053(a); forbids benefit accrual disproportionately at the end of a participant's career, 29 U.S.C. §1054(a), (b)(1); and prohibits cutbacks of benefits already earned, 29 U.S.C. §1054(g). ERISA also imposes reporting, disclosure, and minimum claims processing standards on all plans. 29 U.S.C. §§1021-25, 1133.

2. Congress exempted only two general categories of plans from ERISA. As enacted and today, ERISA exempts governmental plans. 29 U.S.C. §1003(b)(1).

The sole general exemption for private plans is for "church plan[s]." 29 U.S.C. §1003(b)(2).[1]

A "church plan" is defined as "a plan established and maintained ... for its employees ... by a [tax-exempt] church or by a convention or association of churches." 29 U.S.C. §1002(33)(A).[2] At the time of ERISA's enactment, some church plans covered both church employees and employees of church-associated agencies. Thus, the original statute also provided that "a plan in existence on January 1, 1974, shall be treated as a 'church plan' if it is established and maintained by a church ... for its employees *and employees of one or more agencies of such church*." App., *infra*, 1a-2a (emphasis added). But Congress included a sunset clause; that provision "shall not apply ... for any plan year beginning after December 31, 1982." *Id.* at 2a.

Regardless of whether they covered agency employees, all church plans had to be "established ... by a church." Plans like those at issue here, which were established by hospitals and not churches, had to comply with ERISA.

3. The history of the 1980 amendments to the church-plan exemption is discussed *infra*, at pp. 35-47. *See also* App., *infra*, 3a-37a (excerpting legislative

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[1] ERISA also exempts plans maintained to comply with state workers compensation, unemployment compensation, and disability insurance laws; plans maintained abroad or for aliens; and unfunded "excess benefit plan[s]." 29 U.S.C. §1003(b)(3)-(5).

[2] The term "church" in this brief refers to the statutory category of "a church or a convention or association of churches." It also refers to a synagogue, mosque, or other house of worship.

history). The amendments left unchanged subparagraph (A), the basic requirement that a church plan be "established and maintained ... for its employees ... by a church." 29 U.S.C. §1002(33)(A).

a. *Eliminating sunset for church agency employees.* Although the 1980 amendments were ultimately enacted as part of omnibus legislation, the bill's original title stated its primary purpose:

> A bill ... to permit a church plan *to continue after 1982* to provide benefits for employees of organizations controlled by or associated with the church and to make certain clarifying amendments to the definition of church plan.

E.g., 124 Cong. Rec. 10,464, 11,103, 16,518-19 (1978) (emphasis added); 125 Cong. Rec. 1356, 10,042 (1979) (same).

Two provisions accomplished that purpose. New subparagraph (C)(ii)(II) provided that "[f]or purposes of" the church-plan exemption, "[t]he term employee of a church ... includes ... an employee of a[] [tax-exempt] organization ... which is controlled by or associated with a church." 29 U.S.C. §1002(33)(C)(ii)(II). New subparagraph (C)(iii) correspondingly provided that "[a] church ... shall be deemed the employer of any individual included as an employee under clause (ii)." 29 U.S.C. §1002(33)(C)(iii). Together, those provisions created the legal fiction that employees of church-associated agencies are employees of the church. They were therefore now eligible for inclusion in a church's plan "for its employees" under subparagraph (A), with no time limit. That fully accomplished

the key purpose "to continue" to allow churches to cover agency employees in their plans past 1982.

b. *Pension boards.* A different provision was described by Representative Conable when he originally introduced the bill in 1978:

> The existing definition of church plan has also created many technical problems. The large majority of church plans of the congregational denominations are administered by a pension board, a unit separate from, but controlled by, the denomination. It is not clear whether a plan administered by a pension board of a congregational church is a plan established and maintained for its employees by a church.

124 Cong. Rec. 12,107.

Subparagraph (C)(i), the key provision on which petitioners attempt to rely, solved that "technical" problem:

> A plan established and maintained for its employees ... by a church ... includes a plan maintained by an organization, whether a civil law corporation or otherwise, the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church ... , if such organization is controlled by or associated with a church[.]

29 U.S.C. §1002(33)(C)(i). The unchanged subparagraph (A) provided that a church plan had to be "established and maintained by a church." Subparagraph (C)(i) provided that a plan "maintained" by an

organization principally involved in administration or funding of benefits—referred to herein as a "principal-purpose organization"—was now "include[d]." Decentralized denominations that used pension boards to administer or fund their plans could retain church-plan status.

c. As detailed below, no Member of Congress or church representative suggested any need or desire to give church-associated agencies authority for the first time to establish their own ERISA-exempt plans separate from the then-existing church plans—all of which necessarily had been established by a church. *See infra* pp. 35-47.

4. In 1982, the IRS General Counsel issued a memorandum in response to an ex parte request from two orders of nuns that benefit plans for the orders' hospital employees be recognized as church plans for tax purposes. Those plans had not been established by a church. There was no public notice or opportunity for affected employees (or competitors) to comment, and the memorandum itself instructed: "This document is not to be relied upon or otherwise cited as precedent by taxpayers." 1983 WL 197946, at *6.[3] The memorandum took the position that plans could qualify as church plans for tax purposes if they are maintained by a principal-purpose organization. J.A. 636-37.

a. With increasing frequency after 1988, church-associated agencies operating ERISA-compliant plans obtained ex parte letter rulings from government agencies (usually the IRS) stating that their plans qualified as church plans. Until 2011, when the IRS

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[3] That sentence was inadvertently omitted from J.A. 638.

first required advance notice, *see* Rev. Proc. 2011-44, 2011 WL 4389043 (Sept. 22, 2011), plans frequently informed employees of the loss of ERISA protections years after the fact, if at all.[4] The notices that were sent were frequently worthless to an uncounseled employee with no understanding of church-plan status or ERISA. For example, Dignity's summary plan description, purportedly sent to respondent Rollins, recited that the plan "is intended to qualify as a 'Church Plan' within the meaning of ... Section 3(33) of [ERISA]." 16-258 C.A. Excerpts of Record ER-279.

Neither petitioners nor others in their position sought ERISA exemption for *all* of their benefit plans. Petitioners themselves each currently have multiple ERISA-compliant plans. *See* App., *infra*, 38a-39a. Petitioners list cases that have challenged the church-plan status of plans of twenty-six purportedly church-associated firms. 16-74 Pet. 13 n.8. At least twenty-one of those firms also have ERISA-compliant benefit plans. *See* App., *infra*, 39a-52a.

b. The explosion of unregulated and uninsured "church plans" predictably led to failures a few years later. In two 2012 cases that resulted in litigation, complaints allege that employees suffered pension losses of 40-50%.[5] According to press reports, another

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[4] *See, e.g.*, Ellen E. Schultz, *IRS Nears Action on Church Pensions*, Wall St. J. (June 5, 2010), https://goo.gl/6Obu5e.

[5] *See Owens v. St. Anthony Med. Ctr.*, No. 14-4068 (N.D. Ill.); *Butler v. Holy Cross Hosp.*, No. 16-5907 (N.D. Ill.).

hospital's pension fund shortfall may result in a complete cutoff of promised pensions.[6] In three other cases, newspapers reported that underfunding of pensions resulted in significant or yet-to-be-determined losses.[7] In one case, participants in a church plan faced a huge loss until, after public pressure, the IRS rescinded its letter ruling and the PBGC announced it would cover participants' pensions.[8]

c. Eventually, employees became aware of their loss of ERISA protections. Some complained to the Pension Rights Center, an organization dedicated to protecting the rights of employees. The Center began acting on their behalf and researching their claims. *See* 16-74 Pension Rights Ctr. C.A. Amicus Br. 1-4. Employees began to file suits to protect their pensions. These cases were among them.

5.a. As of 2012, petitioner Dignity Health was the fifth largest provider of healthcare in the United States, with $10.5 billion in operating revenue and

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[6] *See* Karin Price Mueller, *Bamboozled: How Catholic hospitals get away with letting pensions go broke*, NJ.com (Nov. 28, 2016), https://goo.gl/7TGIkA.

[7] *See* Mary Jo Layton, *Retirees from St. Mary's Hospital in Passaic may lose their pensions in sale*, The Record (Apr. 26, 2013 https://goo.gl/YfTliv; Mary E. O'Leary, *New Haven's St. Raphael workers face decision on pensions*, New Haven Reg. (July 18, 2013), https://goo.gl/tBpjDT; Claire Hughes, *Retirees of former Schenectady hospital face pension loss*, Times Union (Jan. 29, 2017), https://goo.gl/QwjVMf.

[8] *See* Mary Williams Walsh, *I.R.S. Reversal on 'Church' Pension Plan Rescues a Fund*, N.Y. Times (Apr. 1, 2013), https://goo.gl/ecwIZc.

60,000 employees. J.A. 774. Dignity's system comprises approximately 100 "subordinate corporations and subsidiaries," including some for-profit entities.[9]

Dignity was restructured and renamed in 2012. Petitioners (Br. 14-15) do not mention the following facts: The Archbishop of San Francisco issued a statement in 2011 noting that "[t]he name of the new health system [*i.e.*, Dignity] will not suggest a direct association with the Catholic Church or its apostolic works" and that "the restructured corporation will not be recognized as Catholic." J.A. 560. He also later stated that Dignity "would no longer be a sponsored ministry of the Catholic Church—that is, it would become a secular nonprofit health care system governed by a self-perpetuating board." J.A. 566. The Diocese of Phoenix, where Dignity operates, stated that Dignity is "a secular" corporation. J.A. 569. Dignity's bylaws state that Dignity is "not subject ... to the ecclesial authority of the Roman Catholic Church." J.A. 572.[10]

Dignity established its pension plan in 1989 under ERISA. In 1992, however, Dignity adopted a "retroactive resolution to treat the Plan as a church plan." 16-258 Pet. App. 5a-6a. The Plan is administered by a subcommittee of Dignity's board of directors. J.A. 871-72.

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[9] *See* Dignity Health, *2016 Consolidated Financial Statements*, at 50, https://goo.gl/VxSQHD.

[10] Petitioners state (Br. 14) that two Catholic sisters sit on Dignity's board. They "serve in an individual capacity and not as a representative" of any "Sponsoring Congregation." J.A. 575.

b. Petitioner Advocate Health Care Network, the largest health-care provider in Illinois, operates twelve hospitals and more than 250 health-care facilities. In 2012, Advocate had more than 33,000 employees and operating revenues of $4.6 billion. 16-74 Pet. App. 5a, 31a. Advocate provides retirement benefits for its employees through the Advocate Health Care Network Pension Plan. Advocate claims association with the Evangelical Lutheran Church and the United Church of Christ, but "is not owned or financially supported by either church." *Id.* at 5a.

c. Petitioner Saint Peter's Healthcare System ("SPHS") operates a hospital and other medical facilities and employs over 2,800 people. 16-86 Pet. App. 6a. SPHS established its pension plan in 1974. From then until at least 2006, SPHS operated the plan subject to ERISA and so informed its employees. *Id.* at 6a-7a. In 2006, SPHS sought a private letter ruling from the IRS that its plan met the definition of a "church plan" for tax purposes. *Id.* The IRS issued the ruling in 2013, after this case was commenced. *Id.* at 32a. Meanwhile, in 2012, SPHS announced that future employees would instead participate in a new, defined-contribution plan subject to ERISA. 16-86 C.A. App. A62. Alleged ownership and control of SPHS is hotly disputed. 16-86 BIO 29-30.

d. No one would mistake petitioners' hospital systems for churches. Their operations are in all significant respects identical to the operations of their nonprofit (and, to a great degree, for-profit) competitors. They impose no religious test or requirements on their patients or employees. There is no indication that churches provide them with financial support or

guarantee their debts. Nonetheless, petitioners each claim that their plans are ERISA-exempt "church plans."

6. Respondents, who are participants in petitioners' plans, commenced these suits claiming that their plans are subject to ERISA but do not comply with numerous ERISA provisions, including those requiring reporting and disclosure; minimum vesting and accrual; sound administration of plan assets; and adequate funding. *See, e.g.*, J.A. 278-97, 447-59, 795-801.[11]

Respondents allege that petitioners' plans are not ERISA-exempt church plans because they were not established by a church, as required by 29 U.S.C. §1002(33)(A). Respondents alternatively allege that petitioners' plans are not church plans because: (i) they are maintained by petitioner hospital systems, not by a principal-purpose organization as required by §1002(33)(C)(i); and (ii) none of the petitioner hospital systems is "controlled by or associated with a church," as required by §1002(33)(C)(ii)(II). Respondents finally allege that exempting the plans

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[11] Petitioners have asserted that their plans are adequately funded. This factually disputed issue was not resolved in the courts below, and this Court therefore must take as true the allegations of the complaints. *See, e.g.*, 16-258 BIO 21. In a carefully worded sentence (Br. 10), petitioners state that "[r]espondents have not alleged that petitioners have denied any plan participant any benefit payment." The deficiencies alleged by respondents, however, will result in increased risks, substandard terms, deprivation of participants' procedural rights, and (frequently) reduced benefit payments. Total loss of pension benefits remains a continuing risk.

from ERISA would be an unconstitutional, naked religious preference unrelated to any need to accommodate religious practice. The courts below resolved only the first claim; the other claims would remain open on remand if this Court were to reverse.

7. Each of the district courts held that petitioners' plans were subject to ERISA because they had not been established by a church. As the *Dignity* court found, petitioners' arguments would "stretch[] the statutory text beyond its logical ends." 16-258 Pet. App. 37a; *see* 16-74 Pet. App. 40a; 16-86 Pet. App. 39a.

8. On interlocutory appeal, each of the courts of appeals affirmed without dissent.[12] Each court held that the "plain language," 16-74 Pet. App. 11a; *see* 16-86 Pet. App. 13a, or "more natural reading" of subparagraph (C)(i) "is that the phrase preceded by the word 'includes' serves only to broaden the definition of organizations that may maintain a church plan. The phrase does not eliminate the requirement that a church plan must be established by a church." 16-258 Pet. App. 10a. Each court rejected petitioners' arguments that they were constitutionally *entitled* to be treated like a church and to qualify for the church plan exemption. 16-258 Pet. App. 22a; *see* 16-74 Pet. App. 27a; 16-86 Pet. App. 25a.

SUMMARY OF ARGUMENT

I. In 1980, Congress left untouched the basic church-plan definition, which required that church

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[12] In *Advocate*, Judge Kanne wrote a concurring opinion to "emphasize that this is not one of those cases" in which a statute "compel[s] entities to provide services that violate their religious beliefs." 16-74 Pet. App. 29a.

plans be established and maintained by a church. In subparagraphs (C)(ii)(II) and (C)(iii), Congress eliminated the sunset provision and allowed such plans to continue to cover employees of (usually small and closely-tied) church-associated agencies. In subparagraph (C)(i), Congress also allowed churches to have their plans *maintained* by pension boards, as was a common practice for congregational denominations. But Congress retained the requirement that church plans be established by a church.

The statutory text precludes petitioners' argument. In keeping with the employment-based foundation of ERISA, a "plan" is defined as a program "established or maintained" by an employer for its employees. For purposes of the church-plan exemption, the 1980 amendments deemed the church to be "the employer" of those who worked for church-associated agencies, so that they could then be included in the church's plan. Where the church (*i.e.*, "the employer") does not establish or maintain the pension program, as is the case here, that program is not a "plan" for purposes of the church-plan exemption. And, as subparagraph (C)(i) makes clear, a program that is not a "plan" cannot be "included" as a "church plan."

Even if petitioners' pension programs were "plans" for purposes of the church-plan exemption, they would not be church plans under subparagraph (C)(i). The basic church-plan definition in subparagraph (A) has two criteria ("established and maintained"). Subparagraph (C)(i) "includes" a category of plans by reference to only one of those criteria ("maintained"). As each of the courts below concluded, it is therefore

most naturally read to modify only the criterion it expressly expands ("maintained"), while leaving the other criterion ("established") unchanged.

Subparagraph (C)(i) focuses on principal-purpose organizations involved with employee benefits, *i.e.*, pension boards, and does not mention hospitals or other agencies. Petitioners' theory that Congress intended subparagraph (C)(i) to put them on a par with churches disregards that focus. It also disregards the purpose of the church-plan exemption, which was to protect the confidentiality of a *church's* books and records, especially as they related to the employment of clergy and others; that purpose has no application to firms, like those here, that are not churches.

Petitioners' theory is also inconsistent with the statutory context and with this Court's teachings regarding similar provisions. Moreover, petitioners' theory creates anomalies, such as attributing to Congress an inexplicable intent to trust agencies like petitioner hospitals to establish church plans—but then to forbid them to maintain the plans themselves.

The legislative record confirms that Congress did not intend to dispense with the "established by" requirement and thereby open a gaping loophole in ERISA's otherwise virtually universal coverage. Based on requests by church representatives, Members of Congress sought amendments that would eliminate the 1982 sunset provision. They also wanted to resolve what was termed a "technical" problem created by the tension between the "establish and maintain" requirement and churches' practice of having their plans maintained by a pension board. The 1980 amendments resolved both issues. No one asked,

and no Member of Congress desired, to allow all church-associated agencies operating in the national economy to exempt themselves from ERISA at will. Nor did any later statute somehow indicate that intent.

II. Petitioners' claim that certain non-precedential agency letter rulings are entitled to *Skidmore* deference is mistaken. *Skidmore* deference depends at bottom on the thoroughness of an agency's reasoning and employment of its expertise. The IRS memorandum on which all subsequent letters relied is entirely devoid of reasoning; it does not address any legal or practical issues and its key statement of position directly controverts the statutory text. The agency letters also do not provide any right to reliance vis-à-vis other private parties, such as employees. Indeed, petitioners and others like them are poorly positioned to claim reliance interests, since they purportedly acquired such interests while they kept their uncounseled employees uninformed about their loss of pension insurance and other ERISA protections. District courts act as courts of equity in fashioning ERISA remedies, and they can be expected to fashion appropriate remedies that do not unduly intrude on legitimate interests of employees and employers.

III. The canon of constitutional avoidance compels affirmance here. Petitioners' reading of the statute would expressly favor religious entities over their secular competitors. Such treatment is permissible only to accommodate a substantial burden on religious belief or practice, or to avoid excessive government entanglement with religion. Exempting plans of churches themselves avoids government intrusion

into sensitive church records and employment relations, especially with clergy. But exempting agency plans, which have no confidential church records, cannot be justified on that or any other ground.

Respondents' constitutional arguments reduce to the proposition that it is constitutionally suspect for the government to distinguish between churches and church agencies. This Court has never suggested that such distinctions are impermissible. Doing so now would cast doubt on the validity of countless federal, state, and local regulations. It would also chill legitimate accommodations, since legislators could never accommodate churches without extending the accommodation to church agencies and perhaps farther. The "established ... by a church" requirement does not discriminate against any denomination nor lead to governmental entanglement in religion.

ARGUMENT

Petitioners claim that nearly a million employees who work for firms like theirs have been returned to pre-ERISA conditions, *see* 16-74 Pet. 13-14, with no guarantees for their pensions and no protection from abusive and substandard practices. A decision from this Court authorizing petitioners to exempt themselves from ERISA would likely lead many other firms—hospitals, universities and colleges, and firms in other fields in which current or historic church connections are common—to follow suit. *See* App., *infra*, 53a-66a. Congress never intended to authorize the return of pre-ERISA conditions to these significant portions of the national economy.

I. THE TERMS, STRUCTURE, AND HISTORY OF THE CHURCH-PLAN EXEMPTION MAKE CLEAR THAT A CHURCH PLAN MUST BE ESTABLISHED BY A CHURCH

The 1980 amendments left unchanged the basic requirement in subparagraph (A) that a church plan be "established and maintained ... for its employees by a church." The added subparagraphs (C)(ii)(II) and (C)(iii) eliminated the 1982 sunset, thus permitting church plans to continue indefinitely to include employees of (usually small and very closely-tied) church-associated agencies in their plans.

By contrast, the text of subparagraph (C)(i)—the provision on which petitioners rely—addresses an entirely different problem: the need to eliminate the threat to many existing church plans, especially those of congregational denominations, that were maintained by limited-purpose pension boards and therefore not "established *and maintained*" by the churches themselves. Petitioners' efforts to rewrite that provision to open a gaping hole in ERISA's otherwise comprehensive coverage should be rejected.

A. The Language of Subparagraph 33(C)(i) Unambiguously Requires that a Church Plan Be Established by a Church

Petitioners argue (Br. 21) that subparagraph (C)(i) "expands th[e] legal category" of church plans wide enough to admit their pension plans. Subparagraph (C)(i), however, unambiguously excludes pension programs, like those here, that were not established by a church. Because the statute has "a plain and unambiguous meaning," *Barnhart v. Sigmon Coal Co.*,

534 U.S. 438, 450 (2002), petitioners' contrary interpretation must be rejected.

1.a. All parties agree that "it is a foundational principle under ERISA that an 'employer' establishes a plan for its employees." Pet. Br. 42. ERISA protects benefits based on the employer-employee relationship, not benefits that arise elsewhere. Accordingly, a "plan" under ERISA "means an employee welfare benefit plan or an employee pension benefit plan" or both. 29 U.S.C. §1002(3). An "employee welfare benefit plan" and an "employee pension benefit plan" are each in turn defined as "any plan, fund, or program ... established or maintained *by an employer*" to provide welfare or pension benefits to employees. *Id.* §1002(1)-(2) (emphasis added). The "employer," and the employer-employee relationship, are key to ERISA.

Church plans are defined in terms of that central employer-employee relationship. A church plan is one "established and maintained ... *for its employees* ... by a church." 29 U.S.C. §1002(33)(A) (emphasis added). In 1980, Congress determined churches should be permitted permanently to include employees of church-associated agencies in their plans, free of the 1982 sunset. Because church-agency employees are not employees of the church, Congress created a legal fiction that gave "employee" and "employer" a special meaning. "For purpose of this paragraph," *i.e.*, the church-plan exemption, subparagraph (C)(ii)(II) provides that "[t]he term employee of a church ... includes ... an employee of an organization ... which is controlled by or associated with a church." Correspondingly, "[a] church ... *shall be deemed the em-*

ployer of any individual included as an employee under clause (ii)." 29 U.S.C. §1002(33)(C)(iii) (emphasis added). Thus, someone who actually works for a church-associated hospital is an employee of the church for purposes of the church-plan exemption. And the church—not the hospital—is "the employer" for purposes of that exemption.

b. Congress necessarily removed church-associated agencies themselves from the church-plan calculus when it made the church "the employer." "[T]he employer" under subparagraph (C)(iii) refers to one and only one entity—the church with which an agency is associated. *See Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004); *see also, e.g., Dutcher v. Matheson*, 840 F.3d 1183, 1197 (10th Cir. 2016); *Abdisalan v. Holder*, 774 F.3d 517, 523-24 (9th Cir. 2014); *United States v. Grimes*, 702 F.3d 460, 466-67 (8th Cir. 2012).[13] For purposes of the exemption, church-associated agencies do not have that role.

That necessarily has significant effects. Critically, sections 1002(1)-(3) define a "plan" as a program established or maintained by the employer. Pension programs like those here are (allegedly) maintained by a principal-purpose organization, which is not the employer. Therefore, petitioners' programs could be "plans" only if they were established by the employer, *i.e.*, the church. If, as here, they were not established

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[13] *Accord* Bertrand Russell, *On Denoting*, 14 Mind 479, 481-82 (1905) ("Now *the*, when it is strictly used, involves uniqueness; ... Thus, when we say '*x* was *the* father of Charles II.' we not only assert that *x* had a certain relation to Charles II, but also that nothing else had this relation.").

by the church/employer, they are not "plans" for purposes of the church-plan exemption.

Given that petitioners' pension programs are not "plans" for purposes of the church-plan exemption, they cannot possibly be church plans. Subparagraph (C)(i) unambiguously makes that point. It provides that a church plan "includes *a plan* maintained by" a qualifying principal-purpose organization. Because petitioners' pension programs are not "plans" for purposes of the church-plan exemption, subparagraph (C)(i) does not "include[]" them as church plans. That result was entirely consistent with Congress's purpose in 1980, which was to permit churches to include agency employees in their plans, not to open a new loophole for church-associated agencies.

c. The special definitions of employee and employer in the church-plan exemption do not apply outside that exemption. For other purposes in ERISA, petitioner hospitals are the employers, and pension programs they establish or maintain for their employees are undoubtedly ERISA "plans." But petitioners' pension programs are not "plans," and therefore not "church plans," for purposes of the church-plan exemption. That is sufficient to resolve this case.

2. For petitioners to shoehorn their pension programs into the otherwise unfriendly language of subparagraph (C)(i), they would need a provision that deems church-associated agencies themselves to be churches. Or they would need a provision that deems a church to have established a pension program that was actually established by a church-associated agency. Or—the provision they really want—a provision that eliminates the "established by" requirement

altogether, or that defines a church plan to be one "established *or* maintained by a church *or an organization controlled by or associated with a church*." Any of those provisions would have been an obvious way for Congress to have achieved petitioners' goal, which is to exempt plans of church-associated agencies just like plans of churches. But Congress, which was not asked to and had no interest in broadly expanding the church-plan exemption, enacted no such provision.

B. Subparagraph (C)(i) Would Preclude Petitioners' Theory Even if Their Programs Were "Plans"

Even if one ignored that petitioners' pension programs were not "plans" within the meaning of the church plan exemption, subparagraph (C)(i) is most clearly and naturally read only to expand the entities that may "maintain" a plan under subparagraph (A), not to make the separate "establishment" requirement largely irrelevant. This reading attributes no strange or inexplicable intent to Congress. Instead it attributes to subparagraph (C)(i) exactly the purpose that Congress sought to achieve: to permit otherwise qualified church plans to be maintained by principal-purpose organizations.

By contrast, petitioners' theory would create anomalies and draw inexplicable distinctions. Given subparagraph (C)(i)'s emphasis on principal-purpose, employee benefits organizations, it is impossible to read that provision and imagine that it was drafted because Congress wanted to give church-associated hospitals and other agencies the same authority as churches to establish ERISA-exempt plans.

1. Read as a whole, subparagraph (C)(i) expands only the entities that may maintain a plan, not the entities that may establish one. Subparagraph (A) establishes two criteria for a church plan: the plan must be established by a church, and it must be maintained by a church. Subparagraph (C)(i) expressly expands only the second, "maintain" criterion. In ordinary understanding, if a definition or rule has two criteria, and a further provision expressly modifies only one of them, that provision is understood to affect only the criterion it expands or modifies.

a. The Third Circuit gave a useful illustration. The court hypothesized a statute offering free insurance to a "person who is disabled and a veteran" and an amendment providing that "a person who is disabled and a veteran includes a person who served in the National Guard." 16-86 Pet. App. 14a. The court stated that counsel for petitioner Saint Peter's conceded that a *non*-disabled National Guardsmen would not be entitled to benefits "because only the second of the two conditions was satisfied." *Id.* As the court explained, "[t]his correct response only serves to highlight the fatal flaw" in petitioners' theory. *Id.* The Seventh and Ninth Circuits agreed. 16-74 Pet. App. 12a; 16-258 Pet. App. 14a-15a.

It is not difficult to imagine other definitions or rules with similar structure. Consider the following example:

> To be eligible to be President of the United States, an individual must have attained the age of 35 years and be a natural-born citizen.

> An individual who has attained the age of 35 years and is a natural-born citizen includes a citizen who was born abroad on a U.S. military base to parents who were U.S. citizens.

No one would think that those provisions dispensed with the age requirement entirely for citizens born of two citizen parents on a military base abroad.

Similarly, the basic definition of a church plan in subparagraph (A) requires that a church plan be "established and maintained by a church." Subparagraph (C)(i) provides that a church plan (*i.e.*, "a plan established and maintained by a church") "includes a plan maintained by" a qualifying principal-purpose organization. Without any indication that some unusual meaning is intended, subparagraph (C)(i) therefore leaves one of the original criteria ("established") unchanged, while it expressly modifies and expands the other one ("maintained"). As the courts of appeals concluded, that is the clear and most natural reading of subparagraph (C)(i) taken as a whole. *See Jones v. United States*, 527 U.S. 373, 389 (2002) ("Statutory language must be read in context and a phrase gathers meaning from the words around it.") (citation omitted).

b. Petitioners argue (Br. 29) that the National Guard example relies on the premises that "Congress wanted solely to 'clarify' that Guardsmen 'are veterans'" and did not "intend[] to offer disability benefits to non-disabled individuals." Petitioners assert that the context in the hypothetical establishes that Congress wanted to offer benefits only to those who are Guardsmen *and* disabled. Context has a similar effect

here. An adjacent provision exempts plans "established *or* maintained" by the government. 29 U.S.C. §1002(32) (emphasis added). But Congress expressly chose to require that church plans be both "established *and* maintained" by a church. "Where Congress uses certain language in one part of a statute and different language in another, it is generally presumed that Congress acts intentionally." *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 132 S. Ct. 2566, 2583 (2012). Congress wanted to keep the church-plan exemption narrow by imposing both "establish" and "maintain" requirements.

2. *Reading subparagraph (C)(i) to dispense with the "established by" requirement produces inexplicable anomalies.* Petitioners' theory that subparagraph (C)(i) simply dispenses with the "established by" requirement attributes to Congress an intent to create anomalous and inexplicable distinctions.

a. A church may establish and maintain a church plan itself under subparagraph (A), or it may establish the plan and have it maintained by a principal-purpose agency under subparagraph (C)(i). That appears to be common ground. But under petitioners' theory, a church-associated agency may establish a church plan only under subparagraph (C)(i), which requires that plan to be maintained by a principal-purpose organization. According to petitioners, therefore, Congress inexplicably trusted church-associated hospitals, schools, and other agencies to *establish* plans for their own employees, but simultaneously did *not* trust those same agencies to *maintain* those same plans.

Congress could have had no reason to impose that strange prohibition. If Congress wanted to permit church-associated agencies to establish ERISA-exempt church plans, it surely would have given them the same choice it gave churches: to fund, administer, or otherwise maintain the plans themselves or to use a principal-purpose organization to do so. It defies common sense that Congress would have enacted a provision that at the same time permits a church-associated hospital to establish its own church plan and forbids the hospital to maintain the plan itself.

b. Under petitioners' theory (Br. 36), subparagraph (C)(i) authorizes a principal-purpose organization to establish and maintain a plan for a church and the church's employees. But if the church later decides to maintain the plan itself, the plan would lose its status as a "church plan" because it would not have been "established" by a church (under subparagraph (A)) nor "maintained" by a principal-purpose organization (under subparagraph (C)(i)). Thus, under petitioners' theory and notwithstanding Congress's expressed desire to accommodate churches, Congress inexplicably forbade churches from maintaining certain plans covering their own employees. Congress could have had no reason to impose that prohibition.

3. *Congress's purpose.* Reading subparagraph (C)(i) to dispense with the "established by" requirement is inconsistent with Congress's purpose.

a. Congress exempted church plans to avoid "examinations of books and records" that "may be regarded as an unjustified invasion of the confidential relationship that is believed to be appropriate with regard to churches and their religious activities." S.

Rep. No. 93-383, at 81. That concern applied even if, as was temporarily permitted in 1974 and made permanent in 1980, the church's plan also covered employees of church-associated agencies. In 1980, Congress also recognized that its original concern is implicated even if the church has a closely-tied principal-purpose agency maintain its plan. So long as a church is in the picture, Congress's rationale has force.

Where a church-associated agency has established the plan (and especially where it is maintained by an internal committee, as here), the exemption's rationale fails entirely. No confidential *church* books are involved in such a plan. As the amicus brief for NELA explains, a church-associated agency's books are open for examination for many other purposes. *See also* J.A. 258, 429, 778. Such examination would be unlikely to touch upon the confidential church activities with which Congress was concerned.

b. Petitioners' theory is that Congress's purpose in 1980 was to avoid "distinguishing between churches and their agencies" and to "place[] church agencies and churches on equal footing." Pet. Br. 40, 38. The legislative history disproves that theory. *See infra* pp. 35-47. Those purposes are also inconsistent with subparagraph (C)(i) as written.

If Congress had wanted to put churches and church agencies on a par, it would have enacted a provision like the hypothetical ones discussed *supra* at pp. 20-21. Instead, it enacted subparagraph (C)(i), which does not mention church-associated hospitals or other agencies. Indeed, petitioners essentially admit that, under their reading, most of subparagraph

(C)(i) is surplusage. They suggest that it would carry the same meaning if it omitted the excised words below:

> A plan established and maintained for its employees (or their beneficiaries) by a church or by a convention or association of churches includes a plan maintained by an organization, ~~whether a civil law corporation or otherwise, the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church or association of churches, if such organization is~~ controlled by or associated with a church or a convention or association of churches.

See Pet. Br. 20, 28. But that statute eliminates the provision's operative part, which addresses principal-purpose organizations, leaving only the condition that the organization be "controlled by or associated with a church." It would grant broad new authority to church-associated hospitals and other agencies to establish and maintain plans, even though the actual text focuses only on principal-purpose organizations. The omitted language expresses Congress's actual purpose: to allow otherwise qualified church plans to be maintained by principal-purpose organizations.

Similarly, petitioners puzzlingly assert that "all agree that church plans may cover church-agency employees *and that church agencies may maintain such plans*." Pet. Br. 19 (emphasis added); *see* Pet. Br. 20 ("common ground"), 42 ("all agree"), 61 ("respondents concede"). Under subparagraph (C)(i), only principal-

purpose employee benefits organizations may maintain plans; church-associated hospitals and other agencies may *not* do so. Petitioners' assertions are by-products of their elimination of (C)(i)'s central focus on specialized, principal-purpose organizations—a reading necessary to fit their theory into subparagraph (C)(i).[14]

c. The government argues (Br. 21-22) that Congress was willing to dispense with the church-establishment requirement in (C)(i), because that requirement would have excluded plans that pension boards established for churches.

As discussed below, there is no basis to conclude that such plans existed, that Congress knew of them, or that Congress wanted to exempt them. *See infra* pp. 45-46. But even if Congress had wanted to exempt such plans, Congress would not have eliminated the establishment requirement altogether, as the government argues (C)(i) did. It would instead have tailored the provision, for example, to provide that church plans include plans established or maintained for a church by a principal-purpose organization, or the like. Under the government's theory, Congress attempted to address a modest issue concerning pension boards and churches, but instead opened up a gaping

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[14] At one point, petitioners attempt (Br. 7) to define away the core of subparagraph (C)(i), stating that "th[eir] brief refers to [principal-purpose] organizations as 'church-affiliated organizations' or 'church agencies.'" Their brief does not consistently carry out that stipulation. And conflating principal-purpose benefits organizations with church-associated hospitals and other agencies leads to confusion, not clarity, in interpreting a provision that focuses on the former and does not mention the latter.

ERISA loophole for plans established not by pension boards, but by any church-associated hospital or other agency.

4. *"Established by" is not an "empty formalism."* Petitioners erroneously state (Br. 3, 19, 45) that Congress wanted to dispense with the "established by a church" requirement because it is an "empty formalism."

a. Congress' deliberate use of the conjunctive "established *and* maintained" in the church plan definition—in juxtaposition to its use of the disjunctive "established *or* maintained" in the neighboring governmental plan definition—demonstrates that Congress believed that "established by" was not an "empty formalism. Moreover, Congress employed an "established or maintained" requirement in numerous pivotal ERISA provisions defining "plan" and other key terms. *E.g.*, 29 U.S.C. §1002(1)-(2), (4), (16)(B), (17), (37), (40)(A); *id.* §1104(d)(1). Congress would not have utilized an "empty formalism" in any of those provisions.

b. Contrary to petitioners' contention (Br. 45), establishment by a church is not a "historical fortuity." To "establish" a plan requires a commitment to provide benefits on an ongoing basis. In *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 11-12 (1987), this Court held that a law requiring severance pay did not require the establishment of a plan because, in pertinent part, severance pay was a "one-time, lump sum payment" that did not "require[] an ongoing administrative program to meet the employer's obligation." Critically, the Court emphasized that the employer

"assume[d] no responsibility to pay benefits on a regular basis." *Id.* at 12.

The courts of appeals have broadly agreed that establishment of a plan entails that kind of employer commitment. The First Circuit, in considering whether an accidental death and dismemberment policy qualified as an ERISA plan, explained that "[t]he crucial factor in determining if a 'plan' has been established is whether" there was "an expressed intention by the employer to provide benefits on a regular and long term basis." *Wickman v. Nw. Nat'l Ins. Co.*, 908 F.2d 1077, 1083 (1st Cir. 1990) (citation omitted). *See, e.g., Anderson v. UNUM Provident Corp.*, 369 F.3d 1257, 1264 (11th Cir. 2004) (same); *Deibler v. United Food & Commercial Workers' Local Union 23*, 973 F.2d 206, 209 (3d Cir. 1992) (same); *see also Crews v. Gen. Am. Life Ins. Co.*, 274 F.3d 502, 506 (8th Cir. 2001).

That commitment by an employer includes, *inter alia*, the obligation to ensure that there exists a policy pursuant to which the promised benefits will be funded. *See, e.g.*, 29 U.S.C. §1102 ("Establishment of plan") (a plan's written instrument must "provide a procedure for establishing and carrying out a funding policy"); *Fort Halifax*, 482 U.S. at 9 ("commitment" to provide benefits includes "monitoring the availability of funds for benefit payments"). Although the entity that "maintains" a plan may provide funding for benefits, as recognized by subparagraph (C)(i) ("administration and funding"), the entity that "establishes" a plan is responsible for ensuring that funding is provided (from some source) to pay the benefits it promised.

That understanding was the IRS's approach in a notice of proposed rulemaking concerning the neighboring ERISA exemption for governmental plans. 76 Fed. Reg. 69,172-01 (Nov. 8, 2011). Addressing the meaning of "established" when a new "entity becomes the employer under the plan (for example, in connection with an asset transfer)," the IRS explained that if "a governmental entity becomes the employer ... , the plan will be treated as a governmental plan *established* by a governmental employer on the date of the change." *Id.* at 69,182 (emphasis added). Similarly, "the plan will be treated as being established by a private employer thereafter ... where the employees become employees of a different entity (such as in an asset transfer)." *Id.* "[E]stablished" is not a one-time historical event, but instead requires a continuing commitment by an employer to its employees.[15]

c. The government contends (Br. 31) that "the employer ... that establishes a plan in the first instance does not necessarily retain ongoing responsibility." Its authority, however, is *Donovan v. Dillingham*, 688 F.2d 1367 (11th Cir. 1982) (en banc), which *rejected* the government's argument there that "'establish' means no more than an ultimate decision by an employer ... to provide ... benefits." *Id.* at 1372-73. The passage the government quotes was not about what it means to "establish" a plan; it addressed the different question of "whether a plan ... is a reality."

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[15] The church-plan exemption is thus naturally limited, as Congress intended. Churches may well include employees of small and closely-tied agencies in their plans, but are unlikely to risk including thousands of employees of large firms like petitioner hospitals.

Id. The two statutes cited by the government (Br. 31) address transfers or mergers of plans, which of course occur. But neither statute addresses whether the old employer or the new one has "established" the plan once a transfer or merger has occurred—precisely the issue that the IRS's 2011 Notice does address.

d. This case does not require the Court to reach a detailed (or any) conclusion about the precise nature of the "established by" requirement. Petitioners are mistaken, however, that it is an "empty formalism" or that it provides no protection for employees. When a church establishes a plan, it undertakes a commitment to provide benefits to employees, including by making sure that a mechanism exists to fund those benefits. The participants in the numerous failed church plans discussed above (at pp. 7-8) would have welcomed that legal (and moral) commitment from a church to back up their benefits.

5. *The grammar of subparagraph (C)(i) does not support petitioners.* Petitioners state (Br. 22-23) that subparagraph (A) is a "compound definition" and argue that subparagraph (C)(i) is what this Court has described as a "drafting technique" whereby Congress "repeat[s] a discretely defined word ... to incorporate the definition of a particular word into the definition of a compound expression." *Burgess v. United States*, 553 U.S. 124, 130-31 (2008); *see* Gov't Br. 15-16 n.4. While subparagraph (A) may be a compound definition ("established and maintained"), petitioners are otherwise wrong on all counts.

Subparagraph (C)(i), unlike the provisions discussed in *Burgess*, does not employ a "discretely de-

fined word" that can be substituted into a larger definition. Most importantly, neither petitioners nor the government cite any case involving a statutory structure like the one here, in which a compound definition is followed by an "includes" clause referring to only one element ("maintained") of that definition.[16]

Moreover, *Burgess* does not suggest that Congress *always* intends, regardless of context, to substitute a noun phrase from an "includes" clause into a larger definition. *Helvering v. Morgan's Inc.*, 293 U.S. 121 (1934), on which petitioners rely (Br. 23), in fact refutes that proposition. The tax statute in *Helvering* provided that a taxable year "includes ... a fractional part of a year" for which a return is filed. 293 U.S. at 124. The Court explained that, while "'includes' may sometimes be taken as synonymous with 'means,'" the term can also be "used as the equivalent of 'comprehends' or 'embraces'"; if so, one substitutes the included noun phrase only "*if the context requires.*" *Id.* at 125 (emphasis added). The holding of *Helvering* was that the context there *precluded* that substitution; it precluded counting a fractional part of a year as a taxable year in the context of determining the number of years that a taxpayer could carry forward

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[16] Similarly, petitioners (Br. 22) and the government (Br. 15) mistakenly disregard context in relying on the following schema from *Overall v. Ascension Health*, 23 F. Supp. 3d 816, 828 (E.D. Mich. 2014): "[I]f A is exempt and A includes C, then C is also exempt." The basic church plan exemption has two criteria ("established and maintained"), not one. Subparagraph (C)(i) states a rule by reference to only one of them ("maintained"), thus leaving the second ("established") untouched. As each of the courts of appeals concluded, the simple *Ascension* schema does not capture the meaning of a provision like (C)(i).

a loss. *Id.* at 127. *Helvering* instructed that "the true meaning of a single section of a statute" in a "complex" setting cannot be determined "apart from related sections, or ... isolated from the history of the [statute]," which in that case precluded simple substitution of the included term. *Id.* (citation omitted).

Exactly the same applies here. The structure, context, and history of the statute here make clear that a plan maintained by a principal-purpose organization is not included as a church plan unless it was established by a church.

6. *Petitioners' other arguments are mistaken.*

a. Neither petitioners (Br. 24) nor the government (Br. 16) are correct that the caption of the companion tax code provision—"Treatment as church plan"—supports their position. Subparagraph (C)(i) was undoubtedly "treats as church plan[s]" *some* plans that would not otherwise have qualified. This case concerns *which* plans those are. Nothing in the caption of the tax code provision suggests that Congress intended to treat plans not established by churches as church plans.

b. The surplusage rule (*see* Br. 24) does not favor petitioners here, since, as noted, their construction leaves "established and" as an "empty formalism" and eliminates the operative part of subparagraph (C)(i). Moreover, respondents' reading does give effect to the words "established and" at the beginning of subparagraph (C)(i). Although Congress could instead have written "a church plan includes a plan maintained" by a principal-purpose organization, that does not mean that the words Congress did use—which have the

same meaning as "a church plan"—are not given effect. In any event, the "preference for avoiding surplusage constructions is not absolute," and, as here, courts "should prefer the plain meaning" of a statute over petitioners' nontextual reading. *Lamie v. U.S. Trustee*, 540 U.S. 526, 536 (2004) (citation omitted).

C. Congress Did Not Intend to Alter the Requirement that a Church Plan Be Established by a Church

As each of the courts of appeals concluded, the legislative history leads to only one conclusion: Congress intended to authorize churches to continue to include employees of church-associated agencies in their plans after the 1982 deadline, and to authorize church plans to be maintained by separate principal-purpose organizations.[17] No one asked Congress—and no one in Congress expressed a desire—to create a new exemption for plans established by church-associated hospitals and other agencies. No one mentioned such a dramatic extension of the hitherto jealously guarded ERISA exemption as a possibility, much less a desirable one. Courts are "inclined, generally, to tight reading[s] of exemptions from [ERISA]." *John Hancock Mut. Life Ins. Co. v. Harris Trust & Sav. Bank*, 510 U.S. 86, 97 (1993) (citation omitted). Such a tight, and accurate, reading is warranted here.

1. Under subparagraph 33(A), as originally enacted, ERISA-exempt church plans had to be established and maintained by a church "for its employees,"

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[17] Comments from Members of Congress and other documents describing the 1980 amendments are collected at App., *infra*, 3a-37a.

with one time-limited exception. Grandfathered plans could be "established and maintained by a church ... for its employees *and employees of one or more agencies of such church*," but only until December 31, 1982. App., *infra*, 1a-2a (emphasis added). Thus, under the original statute, all ERISA-exempt church plans were established by churches, maintained by churches, and covered employees of churches. They could, through 1982, include church-agency employees as well.

2. Representative Conable and Senator Talmadge first introduced what became the 1980 amendments in 1978, and later re-introduced them in 1979. This case concerns three provisions of the amendments that address two issues: plans covering church-agency employees (subparagraph (C)(ii)(II) and (C)(iii)), and plans "maintained" by principal-purpose organizations, or pension boards (subparagraph (C)(i)). There was only one substantive change from introduction in 1978 to passage in 1980. Subparagraph (C)(i) as introduced provided that "a plan established and maintained by a church ... *shall* include a plan *established and* maintained by" a qualifying principal-purpose organization. 124 Cong. Rec. 12,108 (emphasis added). In 1980, the italicized words were removed before the bill was passed.

3. The title of the bill, which remained unchanged each time it was introduced, expressed the bill's primary purpose "to permit a church *to continue after 1982 to* provide benefits for employees of organizations controlled by or associated with the church." *E.g.* 124 Cong. Rec. 10,464, 11,103, 16,518-19 (emphasis added); 125 Cong. Rec. 1356, 10,042 (same). The goal was "to continue" allowing churches to include agency

employees in their plans. Achieving that goal had nothing to do with plans established by church agencies, which were subject to ERISA under the original statute and for which the "to continue" purpose had no significance.

As the bill moved through Congress, everyone who touched on the issue referred to the same objective. *See* App., *infra*, 3a-37a. Representative Conable decried the 1982 sunset and the consequent need to split plans after 1982:

> Under the existing definition of church plan, the churches must by 1982 divide their plans into two parts, one covering employees of the church and one covering employees of church agencies.

124 Cong. Rec. 12,107. He said that the new legislation would therefore permit a church to "*continue* after 1982 to cover the employees of its church-associated organizations." *Id.* (emphasis added).

Senator Talmadge made the same point, explaining that under current law "by 1982, the churches must divide their plans into two so that one will cover church employees and the other, agency employees." 124 Cong. Rec. 16,522. To avoid the high costs of doing so, the bill provided that "a church plan shall be able *to continue* to cover the employees of church-associated organizations." *Id.* at 16,523 (emphasis added). "Under the provisions of our bills, ... [t]here will be no need to separate the employees of church agencies from the church plan." *Id.*

Those two, related points—permitting church plans to *continue* their coverage of church employees

and avoiding the *division* of existing plans into new ERISA-exempt and ERISA-compliant plans—were repeated by Senator Talmadge the following year. *See* 125 Cong. Rec. 10,052 (Sen. Talmadge). Subparagraphs (C)(ii)(II) and (C)(iii) resolved the problem by allowing churches to continue indefinitely to include church-agency employees in their plans.

4. Subparagraph (C)(i) addressed a different concern. When he introduced the bill, Representative Conable explained that the existing law "created many technical problems," 124 Cong. Rec. 12,107, including one related to pension boards:

> The large majority of church plans of the congregational denominations are administered by a pension board, a unit separate from, but controlled by, the denomination. ... This structure raises a question whether a plan maintained by a pension board is maintained by a church. ... The bill ... recognizes pension boards as acceptable funding media for church plans.

Id. Senator Talmadge similarly noted that the bill provided that "[a] plan or program funded or administered through a pension board ... will be considered a church plan[.]" 124 Cong. Rec. 16,523. That rationale was repeated when the bill was re-introduced the following year. *See* 125 Cong. Rec. 10,052-53 (Sen. Talmadge).

The "technical problem[]" of accommodating administration and funding of a church's plan by a pension board—the issue addressed by subparagraph

(C)(i)—was a distinctly secondary issue. The bill's title did not mention it. Many of the comments from church officials that Senator Talmadge entered into the Congressional Record addressed the sunset provision and the distressing prospect of dividing plans in 1982. *See* 125 Cong. Rec. 10,054-58, 14,192-93; 126 Cong. Rec. 12,982-83. None addressed the pension-board issue. Yet petitioners' position in this case would make subparagraph (C)(i) a game-changing provision that opened up ERISA exemption to a wide swath of firms in the national economy.

5. The House held hearings in 1978, and Senate committees did so in 1978 and 1979. The focus of many of the comments of church representatives was "[t]he legislatively mandated splitting of church retirement programs into fragments by 1982[.]" *Hr'gs Before House Subcomm. on Labor Standards of the Comm. on Educ. & Labor*, 95th Cong. 835 (1978). A Church Alliance representative stated that "what troubles me the most" is that by "December 31, 1982, all employees of church agencies must be divorced from the church plans." *Joint Hr'gs Before Senate Subcomm. on Private Pension Plans & Emp. Fringe Benefits of the Comm. of Fin.*, 95th Cong. 916 (1978); *see also id.* at 918, 920, 922; *Hr'gs Before Senate Subcomm. on Private Pension Plans & Emp. Fringe Benefits of the Comm. on Fin.* ("1979 Hearings"), 96th Cong. 374-75, 377-78, 380, 384, 388 (1979).

The 1979 Hearings included a summary of the pending bill that noted only one purpose:

> Under present law, the church plan rules ... are applicable with respect to coverage of employees of a church-related agency only for plans in

> existence on January 1, 1974, and only until January 1, 1983. The bill would apply the church plan rules regarding coverage of employees of church-related agencies to plans not yet in existence on January 1, 1974, and would remove the December 31, 1982, expiration date for the rules.

1979 Hearings 167-68.

Senator Talmadge was not present for the 1979 Senate hearings, but his statement devoted substantial attention to the "dilemma" churches would face after 1982. *Id.* at 364. Explaining that "[t]his concept of one plan for both church and agency employees is critical," he said that the bill "will permit a church plan *to continue* to provide retirement and welfare benefits for agency employees" after 1982. *Id.* at 365 (emphasis added). Church representatives agreed. *E.g.*, *id.* at 387 (Church Alliance representative noting that 1982 sunset was "the problem that is of the greatest concern to a number of denominations" and explaining that "it is essential that the employees of the agencies be eligible for coverage *under the benefit plans of the church*") (emphasis added). Neither here nor elsewhere did any committee document or witness discuss any need or desire to create a broad new category of ERISA-exempt, agency-established plans separate from church-established plans.

5. On June 12, 1980, at a committee executive session, Senator Talmadge explained that "[u]nder current law, ERISA ... define[s] [church] plans to include not only church plans covering church employees but also plans covering employees of church-affiliated organizations." J.A. 346. Such plans were necessarily

established by churches, since those were the only ERISA-exempt church plans that "current law" authorized. Senator Talmadge explained that, "unless [Congress] act[s] to preserve the longstanding definition of church plans, the law ... will phase out this definition beginning in 1983." He concisely summarized what the amendments would do:

> [The bills] make the amendments necessary to continue the current church plan definition. The definition would also be expanded to include church plans which *rather than being maintained directly by a church are instead maintained* by a pension board maintained by a church.

J.A. 346 (emphasis added).

Petitioners rely heavily (Br. 38-39) on the ensuing comment by Daniel Halperin, Deputy Assistant Secretary of the Treasury. He objected that the bill "would exclude church agencies from the protection of ERISA, and that would mean that if somebody works for a hospital or a school that happens to be affiliated with a church it would be permissible for that plan to provide no retirement benefits unless they work until age 65, for example." J.A. 347. Petitioners mistakenly contend that Halperin was objecting to a bill that would have allowed church agencies for the first time to establish their own plans. But no such bill was under consideration. To the contrary, Senator Talmadge had just explained that the bill would extend the *current* authorization for church-established plans to

cover agency employees. Halperin objected to eliminating that sunset. He was not objecting to some other, hypothetical bill that no one had mentioned.[18]

6. The bill was combined with other ERISA amendments addressing multiemployer pension plans. A "Joint Explanation" of the entire bill prepared by the committees included a summary of the church-plan amendments that again referred only to eliminating the 1982 sunset:

> The present law definition of the term "church plan" is continued without reference to dates, so that a church plan which covers the employees of a church agency generally would be exempt from the provisions of ERISA. In addition, certain definitions related to church plans are clarified.

126 Cong. Rec. 20,191. A more detailed explanation that followed was entitled "Church Plans Permitted *to Continue* After 1982 to Provide Benefits for Employees of Organizations Controlled by or Associated with Churches." *Id.* at 20,208 (emphasis added). No one suggested that agencies should be permitted to establish their own ERISA-exempt plans.

7. None of the portions of the legislative history cited by petitioners suggests that witnesses proposed,

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[18] Petitioners' claim (Br. 5-8) that Congress passed the 1980 amendments to correct an IRS ruling that certain religious orders were not churches is mistaken. No Member of Congress mentioned that ruling during the legislative process. No one suggested allowing church-associated agencies to establish their own plans as a solution to any concerns raised by the IRS ruling or for any other reason.

or Congress wanted, to grant church-associated agencies a new exemption from ERISA.

a. Petitioners cite (Br. 39) Senator Javits's 1980 floor statement expressing disappointment with the bill because "it exempts those who work for schools and similar institutions which are church-related." 126 Cong. Rec. 20,180. The bill had by that time been repeatedly explained as one that authorized church plans to continue to cover agency employees after 1982, and he was objecting to that feature. There is no reason to read Senator Javits as having objected to permitting agencies to establish church plans—a proposal that had never been mentioned in the three years since the church-plan amendments were first introduced.

b. Petitioners also cite (Br. 36-37) a statement by Senator Talmadge that because many church plans "are administered by a pension board," "there is a question whether the plan is established by a church, as it must be, or by a pension board." 125 Cong. Rec. 10,052 (1979). The mismatch between "administered" (which is closely related to "maintained") and "established" in the quote suggests he may simply have misspoken. But assuming he did not misspeak, nothing in his statement or any later comment suggests that his resolution of the question was to jettison the establishment requirement altogether. Unmentioned by petitioners is that at the time Senator Talmadge spoke, subparagraph (C)(i) expressly permitted principal-purpose organizations—but not church-associated hospitals or other agencies—to "*establish and* maintain" ERISA-exempt church plans. *See supra* p.

36. He may have thought then that granting authorization to principal-purpose organizations to establish plans was a sound idea. But Congress ultimately eliminated the "established and," thus eliminating any authorization for pension boards to establish church plans.[19]

Notably, when Senator Talmadge later discussed the final version of the amendment, he no longer spoke of *establishment* by a pension board. Instead, he stated that the purpose was to accommodate "church plans which rather than being *maintained* directly by a church are instead *maintained* by a pension board maintained by a church." J.A. 346 (emphases added); *see also* 126 Cong. Rec. 20,245 (1980) (statement of Sen. Talmadge) (addressing plans "maintained by separately incorporated organizations called pension boards"). By this time, he recognized that there was no need to permit anyone other than churches to establish church plans, and that the bill, as now written, authorized pension boards only to "maintain" plans established by a church.

c. Scattered passages in the hearings mentioned "agency plans" or the like and the sometimes close relationship between churches and their associated agencies. All, however, are more consistent with Congress's declared purpose (to eliminate the 1982 sunset and therefore allow churches to continue plans that included agency employees) than with the purpose

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[19] Even had the bill not been amended, Senator Talmadge's statement at most would have permitted *pension boards* to establish plans, not to permit church-associated agencies to do so.

proposed by petitioners (to grant a broad new exemption for *separate* plans established by church-associated agencies).

There is no support for petitioners' contention (Br. 35; *see* Gov't Br. 22) that legislators understood that pension boards established plans for church agencies or that Congress was asked to or did exempt such plans from ERISA. None of the three comments petitioners pluck from deep in the hearing records support that view. An American Baptist submission did use the word "established" in the midst of a ten-page history of its pension board. 1979 Hearings 416. But when the same organization moved on to discuss what it sought in the legislation, it never suggested that Congress should allow pension boards to establish ERISA-exempt plans for anyone. Instead, it referred to the need to "resolve[]" whether a plan "*administered by*" a pension board "may qualify as an exempt church plan under ERISA." *Id.* at 443 (emphasis added). It added that, "because of the close relationship that exists between churches and their affiliated agencies, it is essential that the employees of the agencies be eligible for coverage *under the benefit plans of the church*." *Id.* (emphasis added).

A Presbyterian representative did object to the prospect of having to "create new Plans ... subject to ERISA" if the 1982 sunset were not changed. *Id.* at 471-72. But that comment merely referred to a hypothetical need that disappeared when Congress eliminated the sunset. Moreover, it is unclear what the speaker intended by the word "create," including whether the pension board would merely act as an

agent of the church that would make the benefit commitment. In any event, the Presbyterian representative's submission did not ask Congress to exempt plans "create[d]" by pension boards; it asked Congress instead to eliminate the deadline so that such creation would be unnecessary. *Id.*[20]

That leaves a Southern Baptist submission that addressed "concern" over what will be deemed "agencies which cannot participate in church plans after December 31, 1982" and over "whether church pension boards will be able to continue to serve these agencies after 1982." *Id.* at 401. Those comments addressed the problems caused by the 1982 sunset, not any need for new authority for agencies to establish their own ERISA-exempt plans. In a concluding sentence, the submission asked for church-plan status for "denominational annuity programs established and maintained through church pension boards." *Id.* That "established ... through" terminology is a reasonable short-hand for plans in which the pension board acts as agent for the church, and in which the church thus establishes the plan using the services of the pension board. Even if that sentence, buried deep in the hearing record, were ambiguous, it would not have informed Congress of any general need for a broad new ERISA exemption.

d. The government argues (Br. 22) that Congress wanted to create a broad new exemption because

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[20] Petitioners discuss (Br. 35-36) the Episcopal Church's pension system, but the documents they cite are governing documents of the Episcopal *convention*, which suggest that the convention (and not its agent, the pension board) committed to providing benefits on an ongoing basis.

some plans administered by pension boards had a long history, and it "is implausible to think that Congress intended the ... church-plan definition to turn on an uncertain inquiry into the identity of the organization that had 'established' a plan decades earlier." As noted, that inquiry does not require old records if a new employer has made the relevant commitment to provide benefits on an ongoing basis. In any event, until the government's brief in this case, no one has suggested that a concern with finding old records motivated the 1980 amendments. Indeed, the inquiry into the establishment of a plan is ordinarily a simple documentary one, *see* 16-258 Pet. App. 53a-59a, and there is no reason to think the documents would be unavailable.

D. Later Legislation Provides No Support for Petitioners

1. Petitioners argue (Br. 31) that three other federal statutes support their position. One statute provides that the YMCA's pension plans will be "treated as a church plan ... which is maintained by" a principal-purpose organization. Pub. L. No. 108-476, §1, 118 Stat. 3901 (2004). That Congress wanted plans maintained by one well-known, nationwide organization (the YMCA) to be "treated" as church plans does not somehow "presume[] that church plans need not be established by churches." Pet. Br. 31. Indeed, the "treated as" language freed the YMCA plans from the "established by" requirement, *and* the requirements to be "controlled by or associated with" a church and to be maintained by a principal-purpose organiza-

tion.[21] No analogous statute provides that plans established by church-associated agencies shall be "treated as" church plans even though they are not.

Petitioners also erroneously argue (Br. 32) that two tax and securities statutes "treat churches and [church-associated] organizations as equal under the church plan exemption." The first statute, 26 U.S.C. §403(b)(9)(B), does not define or otherwise reference "church plans," and it certainly does not "deem" any plan to qualify as a "church plan." Pet. Br. 32. Instead, §403(b)(9)(B) provides that, regardless of ERISA-exempt church plan status, a defined contribution, individual account program "established *or* maintained" by a church or a pension board (labeled "retirement income accounts") may be "treated as" a tax-exempt annuity within the meaning of IRC §403(b).[22] A court may not "construe terms to have the same meaning when Congress expressly define[d] the terms differently." 16-258 Pet. App. 17a (citation omitted).

The second statute, 15 U.S.C. §77c(a)(2), incorporated these new §403(b)(9)(B) "retirement income accounts" into an existing exclusion from the securities laws that already excluded plans that are tax-qualified under IRC §401(a) (including *both* church plans *and* ERISA-covered plans). In short, neither of those

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[21] When the bill passed, Senator Bunning made clear that a church plan is "a type of pension plan offered by churches or associations of churches." 150 Cong. Rec. 25,526.

[22] Notably, §403(b) annuity programs, including those offered by avowedly *secular* charities and educational institutions, are exempt from ERISA if the employer does not make contributions on behalf of employees. *See, e.g.*, 29 C.F.R. §2510.3-2(f).

statutory provisions addresses the meaning of the church plan definition at all.

2. Petitioners contend (Br. 53-55) that Congress ratified the 1982 IRS memorandum and succeeding opinion letters when it referred to the church-plan exemption in other statutes. Congressional acquiescence, however, may not be inferred absent "'overwhelming evidence' that Congress considered and failed to act upon the 'precise issue' before the Court." *Rapanos v. United States*, 547 U.S. 715, 750 (2006) (plurality opinion) (citation omitted); *accord Solid Waste Agency v. U.S. Army Corps of Eng'rs*, 531 U.S. 159, 170 (2001).

Here, despite prodding by respondents each time petitioners have made this argument, petitioners have never produced any evidence that Congress had any knowledge of the agency interpretation, and Congress has certainly never "considered" and "failed to act" with respect to it. Congressional approval may not be inferred where, as here, "[t]here is no indication that Congress was aware of" the agency's interpretation. *Demarest v. Manspeaker*, 498 U.S. 184, 190 (1991). Other cases cited by petitioners are inapposite because they addressed instances where Congress was certainly aware of the existing statutory interpretation. *See, e.g., Lorillard v. Pons*, 434 U.S. 575, 581 (1978) ("Congress exhibited both a detailed knowledge of the [statutory] provisions and their judicial interpretation[.]"); *Cottage Sav. Ass'n v. Comm'r*, 499 U.S. 554, 561-62 (1991) (series of "landmark" Supreme Court cases formed the "contemporary legal context" in which Congress acted).

II. NON-PRECEDENTIAL AGENCY LETTER RULINGS DO NOT WARRANT SUBJECTING EMPLOYEES TO THE RISKS AND COSTS OF UNINSURED AND SUBSTANDARD BENEFIT PLANS

This case concerns not only present and future employees at firms that currently claim the church-plan exemption, but also the untold number of employees in the new church plans likely to be spurred if this Court ruled in favor of petitioners. Among plans similar to those here, there are at least 504 ERISA-compliant defined-benefit plans sponsored by nonprofit hospitals covering 1.9 million employees. 739,591 of those employees are in plans that have some current or historic ties to a church. *See* App., *infra*, 53a-89a.

The risks of exemption from ERISA have been realized most graphically by participants of the seven purported church plans that failed in recent years, *see supra* pp. 7-8, but the other and more hidden costs of substandard plans may be at least as great. Petitioners' purported past reliance on agency letter rulings—which are nonbinding and entirely unreasoned—does not entitle them to a perpetual, extra-statutory exemption from ERISA, particularly when it comes at the expense of their employees.

A. The Federal Agency Letters, Which May Not Be Cited or Relied Upon and Are Devoid of Reasoning, Are Not Entitled to Deference

Petitioners contend (Br. 47) that "any ambiguity [in the statute] requires deference to the longstanding

views of the IRS, DOL, and PBGC." Petitioners and the government (Br. 25) assert that the agencies' views are entitled to *Skidmore* "respect," based on "the thoroughness evident in [the agency's] consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade." *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944). The agencies, however, have never given thorough, or any substantial, consideration to the meaning of the provisions at issue here. Insofar as they have hinted at their reasoning, it is demonstrably invalid. Their views are not entitled to deference.

Petitioners and the government claim only one source for the reasoning behind the government's position: the 1982 IRS General Counsel Memorandum, J.A. 628-38, which petitioners characterize (Br. 48) as "thorough and well-reasoned." No matter how closely one reads it, however, that memorandum is innocent of *any* reasoning supporting its position that church-associated agencies could establish church plans so long as they are "maintained ... by a[principal-purpose organization]." J.A. 633, 636.

For example, the memorandum does not explain why the IRS rejected, or whether it even considered, the view that the "established by a church" requirement of subparagraph (A) applied to plans "maintained" by a principal-purpose organization under subparagraph C(i). The memorandum does not consider whether a benefits program established by a church-associated agency is a "plan" for purposes of the church-plan exemption. *See supra* pp. 17-21.

It does not consider the anomalies created by its position. *See supra* pp. 24-25. It does not consider the consequences of its position for employees. It misconstrues a single statement from Senator Javits, *see supra* pp. 43, but otherwise does not consider the legislative record or Congress's purposes.[23]

Moreover, even the memorandum's statement of the law misreads the statute, under any view: the memorandum states that because the order of nuns that established the retirement program at issue was not a church, "the plan ... must be *maintained* either by ... a church, or by a[] [principal-purpose organization]" to qualify as a church plan. J.A. 636. At least the first alternative is obviously mistaken; if a church did not establish the plan, maintenance by a church would not make the plan a church plan under any possible interpretation of subparagraphs (A) or (C)(i). This error underscores the IRS's failure to arrive at or explain a coherent view of the statute.

The 1982 memorandum and subsequent letters were issued in an ex parte process of which, until the IRS required notice to interested parties in 2011, employees ordinarily had no notice. The memorandum's conclusion may have seemed minor in response to a single request in 1982. Beginning in the late 1980s, however, benefits consultants realized its possibilities

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[23] The memorandum also is entirely devoid of reasoning to support its position (J.A. 637) that an internal committee may somehow be a principal-purpose organization under subparagraph (C)(i).

for firms like petitioner hospitals.[24] As petitioners and others climbed on the bandwagon, the agencies never re-examined their views or performed any analysis. This Court has never deferred to agency views reached without any detectable reasoning, much less where the agency obviously misread the statute. No deference is warranted.

B. Petitioners' Reliance Interests Are Weak and Outweighed by the Risks Imposed on Present and Future Employees

Petitioners argue (Br. 51) that "the government's interpretation has generated enormous reliance by hundreds if not thousands of religious organizations." Petitioners in fact have no legitimate reliance interests.

First, the IRS memorandum itself instructs that it "is not to be relied upon or otherwise cited as precedent by taxpayers." 1983 WL 197946, at *6. The same is true of the later-issued private letter rulings, which also "may not be used or cited as precedent." 26 U.S.C. §6110(k)(3); *see* ERISA Procedure 76-1, § 10. Petitioners may be entitled to rely on IRS letters *vis-à-vis* the IRS with respect to the tax-qualification status of their benefit plans.[25] Petitioners, however, had fair notice that they may not rely on the informal, non-precedential position of the IRS as a justification for

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[24] According to petitioners, 30 similar rulings were issued between 1982 and 1987; 241 between 1988 and 1993; 201 between 1994 and 1999; and 94 thereafter. *See* 16-74 Pet. App. 64a-111a.

[25] *See, e.g.*, IRS Rev. Proc. 2017-1, §§2.01, 11.01, 2017 WL 27372 (Jan. 3, 2017).

denying employees the protections to which they are entitled under ERISA.

Second, petitioners and others similarly claiming church-plan status are not in a position to assert reliance or "unfair surprise" (Br. 52-53) *vis-à-vis* their employees. Most of those in petitioners' position sought church-plan status without notifying their employees (who were ordinarily unrepresented by counsel) that they were doing so, and frequently without telling their employees of the fact or significance of operating outside ERISA's bounds, including the loss of pension insurance. It is no wonder that it took unrepresented employees who were left in the dark some time to catch up with employers' rush to claim church-plan status between 1988 and 2000. Petitioners are in a poor position today to claim protection for reliance interests purportedly acquired while they kept their unrepresented employees uninformed and off-guard.[26]

Third, contrary to their claims, petitioners would not suffer dire or unwarranted consequences if required to comply with ERISA. Virtually every other firm in the private economy, including numerous firms directly competing with petitioners, must comply with ERISA.[27] Many of them have ERISA-

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[26] Notably, Dignity has not been operating with a letter ruling from the IRS, *see* 16-258 BIO 16-17, and SPHS got its ruling after this case had been filed, *see* 16-86 Pet. App 32a.

[27] Respondents have shown that many firms that compete with petitioner hospitals provide at least equivalent levels of charitable care *and* comply with ERISA. 16-74 BIO 26-27; 16-86 BIO 18-20; 16-258 BIO 24-25. Petitioners do not here challenge that showing.

compliant defined-benefit plans. *See* App., *infra*, 53a-89a. Requiring petitioners also to do so would simply even the playing field.

Petitioners contend (Br. 52) that compliance with ERISA would require them "to radically reorganize to comply with ERISA's participation, vesting, and accrual rules." The burden on petitioners would be proportionate to how deeply deficient are their "participation, vesting, and accrual rules." Cases in which the employer has far departed from fair benefits policies and practices are those in which employees are most at risk, and most entitled to relief.

Nor would petitioners or their employees suffer unwarranted securities or tax-law consequences. Provisions cited by petitioners either (i) exempt *all* plans (ERISA-covered plans and church plans) that are tax-qualified under IRC §401(a), or (ii) address the inapposite issue of "retirement income accounts" defined in IRC §403(b)(9)(B). *See supra* pp. 48-49. A plan's status as an ERISA-exempt church plan has no bearing on the applicability of those provisions.

Fourth, notwithstanding petitioners' warnings (Br. 52), ERISA penalties are authorized "in the court's discretion." 29 U.S.C. §1132(c)(3). Petitioners offer no example of any court awarding "tens of billions of dollars" in penalties, and they presumably believe that, insofar as they have operated in good faith, it would be a clear abuse of discretion to award such penalties here. More generally, ERISA empowers district courts to grant "appropriate equitable relief," 29 U.S.C. §1132(a)(3), which affords them ample flexibility to fashion relief sensitive to the equities in the

particular case. *Cigna Corp. v. Amara*, 563 U.S. 421, 439-40 (2011).

III. CONSTITUTIONAL PROBLEMS WOULD ARISE ONLY IF PETITIONERS' VIEW OF THE STATUTE PREVAILED

The canon of constitutional avoidance compels respondents' construction. *See, e.g.*, *Clark v. Martinez*, 543 U.S. 371, 379 (2005).

A. Petitioners' Construction Would Create Grave Constitutional Doubts

1. "A proper respect for both the Free Exercise and the Establishment Clauses compels the State to pursue a course of 'neutrality' toward religion, favoring neither one religion over others nor religious adherents collectively over nonadherents." *Bd. of Educ. v. Grumet*, 512 U.S. 687, 696 (1994) (citations omitted). That includes a general prohibition against "pass[ing] laws which ... aid all religions" over those who profess no religious belief. *Torcasso v. Watkins*, 367 U.S. 488, 493 (1961).

The government may act to "alleviate[] exceptional government-created burdens on private religious exercise," *Cutter v. Wilkinson*, 544 U.S. 709, 720 (2005), or to avoid "excessive government entanglement with religion." *Id.* at 718 n.6 (citation omitted). Otherwise, however, exempting religious entities from a generally applicable law would run afoul of the Establishment Clause.

2.a. Exempting petitioners from ERISA would not accommodate any religious belief or practice. ERISA is indistinguishable from an array of neutral enact-

ments that do not significantly burden religious exercise when applied to commercial activities. *See, e.g.*, *Jimmy Swaggart Ministries v. Bd. of Equalization*, 493 U.S. 378, 391-94 (1990) (even "substantial administrative burdens ... do not rise to a constitutionally significant level"). A mere desire to save money for religious entities cannot justify an exemption; to the contrary, it makes the exemption constitutionally suspect. *Id.* at 391.

Petitioners argue (Br. 60) that compliance with ERISA would limit their ability to follow their moral convictions when investing plan assets. ERISA's duty to act "solely in the interests of participants," 29 U.S.C. §1104(a)(1), however, does not prohibit screening morally objectionable investments if (as is usually the case) available alternative investments may be reasonably expected to perform on par with those that are screened out. *See* 29 C.F.R. §2509.2015-01.[28] Nor does it impose any *additional* burden on petitioners. Their own plan documents (like most such documents) already require that plan fiduciaries act solely in the interest of participants and beneficiaries of the plans. J.A. 229-30, 377, 842.

b. Requiring compliance with ERISA would not lead to excessive entanglement. The church plan exemption was enacted to avoid "examination of books

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[28] *See* 80 Fed. Reg. 65,135-01, 65,136 (Oct. 26, 2015) (new DOL bulletin superseding prior bulletin that had "unduly discouraged fiduciaries from considering ... environmental, social, and governance factors").

and records" that "might be regarded as an unjustified invasion of the confidential relationship" that is "appropriate with regard to churches and their religious activities." S. Rep. No. 93-383, at 81. That purpose, like the exemption itself, applies only to *churches*.[29] *See supra* pp. 25-26. Recordkeeping and inspection provisions that "apply only to commercial activities undertaken with a 'business purpose,'" like those of petitioners, "have no impact on [a party's] ... evangelical activities." *Tony & Susan Alamo Found. v. Sec'y of Labor*, 471 U.S. 290, 305 (1985). Moreover, petitioners already participate in Medicare and Medicaid and issue bonds, all of which require detailed disclosure of their financial records and relationships. J.A. 258, 429, 778. Complying with ERISA would not risk significant government entanglement in their religious practices.

3. Even an otherwise permissible religious accommodation would violate the Establishment Clause if it failed to "take adequate account of the burdens a requested accommodation may impose on nonbeneficiaries." *Cutter*, 544 U.S. at 720 (citing *Estate of Thornton v. Caldor*, 472 U.S. 703 (1985)). Petitioners' employees are denied all ERISA protections. *See, e.g.*, *United States v. Lee*, 455 U.S. 252, 261 (1982) ("[A]n

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[29] The government contends (Br. 33 n.8) that the church-establishment requirement does "not narrow the range of employees who could potentially be covered under ERISA-exempt plans" and therefore would not cure the constitutional defect. The constitutional defect, however, consists not in the number of employees exempted, but in the absence of any permissible justification for exempting them. Moreover, there is no doubt that the church-establishment requirement *would* lead to a vastly smaller range of ERISA-exempt plans and employees.

exemption from social security taxes [for] an employer operates to impose the employer's religious faith on the employees."). Indeed, competing hospitals are also disadvantaged, as petitioners can use the money saved by avoiding ERISA to advance in the competitive marketplace.

B. The Courts of Appeals' Decisions Create No Substantial Constitutional Doubts

Petitioners contend (Br. 55-59) that limiting the ERISA exemption to church-established plans creates a serious constitutional doubt. Petitioners' claims that they would suffer constitutional harm if not exempted from ERISA are subject to skepticism. Petitioners, like most other firms that operate purported church plans, have chosen to operate other benefit plans subject to ERISA. *See supra* p. 7. That suggests that their claimed constitutional harms are insubstantial. In any event, their claims are wrong.

1. This Court has never suggested that the Constitution requires Congress to extend a permissible accommodation for churches to church agencies (or farther). As Prof. Laycock, representing the Baptist Joint Committee for Religious Liberty, recently noted in an amicus brief in *Zubik v. Burwell*, 136 S. Ct. 1557 (2016), statutes "may distinguish the religious core from more peripheral contexts, or more intensely religious contexts from those that are less so." 2016 WL 692850, at *33. "At the heart of communal religion is the church," and "[a]n exemption confined to the church itself is narrow, but it is not discriminatory." *Id.* at *35. Finding a constitutional defect in a law that exempts churches but not church agencies would lead to "disastrous consequences," because "specific

exemptions" for churches that are otherwise warranted "would ... become politically impossible" at all levels of government. *Id.* at *37.

2. The IRS has emphasized that, "[b]ecause special tax rules apply to churches, it's important to distinguish churches from other religious organizations." IRS Pub. 1828, at 1. Numerous federal statutes apply to churches but not associated agencies or firms. *See* 26 U.S.C. §§170(b)(1)(A)(i), 508(c), 508(c)(1)(A), 514 (b)(3)(E), 3309(b)(1), 6003(a)(3)(A)(i), 6043(b)(1); 2 U.S.C. §1602(8)(B)(xviii).

States and municipalities also routinely distinguish between churches and other religious organizations. Zoning codes frequently permit churches to locate in residential areas, or exclude certain uses near churches. *E.g.*, Patricia E. Salkin, *American Law of Zoning* §§28.10, 18.52 (5th ed. 2016). State liquor laws often have special provisions for use of alcohol by churches. *E.g.*, Ariz. Rev. Stat. §4-226(4); Fla. Stat. §564.02(3)(b); Ga. Code §3-6-70; N.C. Gen. Stat. §18B-103(8). Tax laws, safe-haven laws, and numerous other state and local laws make the same distinction.

This Court has never suggested that the government must extend an accommodation for churches to church-associated agencies, or farther. If petitioners' arguments were accepted, any statute or regulation granting an accommodation to a church but not to church agencies would raise "constitutional doubts," calling into question a broad swath of American law. A wave of litigation from church-associated agencies seeking to obtain the benefits and exemptions granted to churches could be expected.

3. Petitioners argue (Br. 57) that if church plans must be established by a church, religious organizations "will contend that they are the 'church,' or that a church established their pension plans." Determining who established a plan is unlikely to be constitutionally problematic. While petitioners cite *Dignity*, the district court there resolved the issue on the basis of legal documents, without examining religious doctrine in any way. 16-258 Pet. App. 53a-59a. As for determining whether an entity is a church, that too will rarely be difficult. None of the petitioner hospital systems, which have up to 60,000 employees, could be mistaken for a church. While more difficult cases can arise, courts of appeals make the same distinction in the variety of legal contexts discussed above without an intrusive inquiry into religious doctrine. *See id.* at 24a.[30]

Equally important, petitioners' theory does not avoid the need to inquire into religious bonds, and may well exacerbate it. Under even petitioners' theory, applying the church-plan exemption to church-agency plans requires an inquiry into whether the agency (under subparagraph (C)(ii)(II)) and the principal-purpose organization that maintains the plan (under subparagraph (C)(i)) are "controlled by or associated with a church"—*i.e.*, whether the entity "shares common religious bonds and convictions" with a church. 29 U.S.C. §1002(33)(c)(iv). That inquiry may

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[30] Courts and legislatures have developed various legal tests to determine whether a particular organization is a church. E.g., *Found. of Human Understanding v. United States*, 614 F.3d 1383, 1387 (Fed. Cir. 2010); Ark. Code. Ann. §3-4-206(a) (definition of church for liquor law purposes).

be complex. *See, e.g.*, *Chronister v. Baptist Health*, 442 F.3d 648 (8th Cir. 2006); *Lown v. Cont'l Cas. Co.*, 238 F.3d 543 (4th Cir. 2001). Indeed, that is an issue in each of these three cases that will have to be litigated only if the Court were to adopt petitioners' position. The church-establishment requirement is likely to resolve most cases, and thus would eliminate the need to make the "controlled by or associated with" inquiry at all.

4. Finally, petitioners contend (Br. 58) that "[t]he decisions below also discriminate against decentralized religions." There is no such discrimination. The entirely abstract arguments of petitioners and their amici fail to identify any church or church-related entity that would suffer such discrimination. It may be true, as petitioners (Br. 40-42) and the government (Br. 19-20) say, that congregational churches use principal-purpose organizations—*i.e.*, pension boards—to administer their plans more often than do hierarchical churches. Insofar as the original statute put that practice in question, Congress eliminated the problem in 1980 by adopting subparagraph (C)(i).

Moreover, notwithstanding petitioners' repeated complaints that there may be no "central" or "single" church that can establish a plan in a decentralized denomination (Br. 3-4, 41, 59), petitioners entirely ignore that both a *local* church or a "*convention or association*" of churches may establish church plans pursuant to subparagraph (A). Any church or denomination, decentralized or otherwise, acting alone or collectively, has exactly the same access to the church-plan exemption as do hierarchical churches.

CONCLUSION

The decisions of the courts of appeals should be affirmed.

Respectfully submitted.

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FEBRUARY 16, 2017

APPENDIX

APPENDIX A

1974 Version of Church Plan Definition

Pub. L. No. 93-406, § 3(33), 88 Stat. 829 (1974) provides:

(A) The term "church plan" means

(i) a plan established and maintained for its employees by a church or by a convention or association of churches which is exempt from tax under section 501 of the Internal Revenue Code of 1954, or

(ii) a plan described in subparagraph (C).

(B) The term "church plan" (notwithstanding the provisions of subparagraph (A)) does not include a plan

(i) which is established and maintained primarily for the benefit of employees (or their beneficiaries) of such church or convention or association of churches who are employed in connection with one or more unrelated trades or businesses (within the meaning of section 513 of the Internal Revenue Code of 1954), or

(ii) which is a plan maintained by more than one employer, if one or more of the employers in the plan is not a church (or a convention or association of churches) which is exempt from tax under section 501 of the Internal Revenue Code of 1954.

(C) Notwithstanding the provisions of subparagraph (B)(ii), a plan in existence on January 1, 1974, shall be treated as a "church plan"

if it is established and maintained by a church or convention or association of churches for its employees and employees of one of more agencies of such church (or convention or association) for the employees of such church (or convention or association) and the employees of one or more agencies or such church (or convention or association), and

if such church (or convention or association) and each such agency is exempt from tax under section 501 of the Internal Revenue Code of 1954.

The first sentence of this subparagraph shall not apply to any plan maintained for employees of an agency with respect to which the plan was not maintained on January 1, 1974. The first sentence to this subparagraph shall not apply with respect to any plan for any plan year beginning after December 31, 1982.

APPENDIX B

Excerpts of Legislative History

April 18, 1978 - 124 Cong. Rec. 10,464:

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

* * *

By Mr. CONABLE:

H.R. 12172. A bill to amend the Internal Revenue Code of 1954 to permit a church plan to continue after 1982 to provide benefits for employees or organizations controlled by or associated with the church and to make certain clarifying amendments to the definition of church plan; to the Committee on Ways and Means.

April, 24, 1978 - 124 Cong. Rec. 11,102-03:

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 or rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

* * *

By Mr. CONABLE:

H.R. 12312. A bill to amend the Employee Retirement Income Security Act of 1974 to permit a church plan to continue after 1982 to provide benefits for employees of organizations controlled by or associated with

the church and to make certain clarifying amendments to the definition of church plan; jointly, to the Committees on Education and Labor and Ways and Means.

May 2, 1978 - 124 Cong. Rec. 12,106-08:

Mr. CONABLE. Madam Speaker, I wish to discuss a bill, H.R. 12172, which I recently introduced to amend the Internal Revenue Code of 1954 to permit a church plan to continue after 1982 to provide benefits for employees of organizations controlled by or associated with the church and to make certain clarifying amendments to the definition of church plan.

* * *

For many years our church plans have been operating responsibly and providing retirement coverage and benefits for the clergymen and lay employees of the churches and their agencies.

* * *

In 1974, when we enacted the Employee Retirement Income Security Act of 1974, popularly called ERISA, we exempted church plans from the provisions of the act to avoid excessive Government entanglement with religion in violation of the first amendment to the Constitution. We provided that a church plan is a plan established and maintained for its employees by a church or by a convention or association of churches which is exempt from tax under section 501. At the same time we provided that a church plan, if it were to continue to be identified as such, could not provide

coverage to employees of church agencies not participating in the plan in 1974, nor could it provide coverage for employees of any agencies after 1982.

* * *

Under the existing definition of church plan, the churches must by 1982 divide their plans into two parts, one covering employees of the church and one covering employees of church agencies. Present law fails to recognize that the church agencies are parts of the church in its work of disseminating religious instruction and caring for the sick, needy, and underprivileged. Estimates of the initial costs of the division of church plans that have been in existence for many years and of the additional continuing costs of maintaining two separate plans are so significant that reduced benefits may result.

Some of these additional costs must of necessity be shifted to the local churches and agencies. Churches and church agencies are often very small and operate marginally, being staffed by two or three persons who work at a personal sacrifice. Plan contributions for churches and agencies are generally dependent upon tithes and offerings. There is virtually no way to pass on higher plan costs to the consumer as businesses can. If forced by the 1982 deadline to establish a retirement plan separate from the denominational plan and to comply with the paperwork and other requirements of ERISA, many of the agencies might decide to abandon their retirement plans.

Mr. Speaker, the division of the church plans will also hurt the work of our churches. The churches consider their agencies as an extension of their mission. A significant number of ministers and lay employees

move frequently from church to agency and back in pursuance of their careers. A church may ask a rabbi to serve in an agency where his services are most needed. The rabbi may then return to pulpit work. The present definition of church plan does not satisfy the unique need of our churches to cover continuously their employees in one plan.

* * *

One of the most important binding influences within a religious denomination is the pension and welfare benefits program. The division of the church plans may lessen the unity of the church. Some churches fear that division of their plans will destroy the sense of oneness within the church and weaken the dedication of agency employees to the denomination.

Moreover, in a congregational denomination, if the plan covering the agencies is required to comply with ERISA, the denomination would not be able to require an agency either to join in the plan or to observe the requirements of ERISA. In the congregational type of denomination, the local churches and agencies are self-governing. Unlike corporate structures, no lines of authority exist from the denomination.

The existing definition of church plan has also created many technical problems. The large majority of church plans of the congregational denominations are administered by a pension board, a unit separate from, but controlled by, the denomination. It is not clear whether a plan administered by a pension board of a congregational church is a plan established and maintained for its employees by a church. A pension board is usually incorporated because the church does

not want the funds set aside for retirement purposes to be subject to the general creditors of the church.

This structure raises a question whether a plan maintained by a pension board is maintained by a church.

* * *

Under section 1 of the bill, effective as of January 1, 1974, a church plan may continue after 1982 to cover the employees of its church-associated organizations, both those participating in 1974 and those that begin participating after 1974. This recognizes the special nature of church agencies and of their special problems in complying with ERISA. It also recognizes the unique needs of ministers and denominational employees to move about with the denominational structure and still stay within the church plan.

The bill achieves this result by retaining the basic definition of church plan as a plan established and maintained for its employees by a church or by a convention or association of churches exempt from tax under section 501. The term "employee", however, is redefined to include: . . . an employee of an organization which is exempt from tax and which is controlled by or associated with the church; and

* * *

For purposes of section 414(e), all such employees are deemed to be employed by the denomination. The combined effect of these provisions is to treat both hierarchical and congregational denominations in the same manner for purposes of the church plan definition. The bill, thus, accommodates the differences in beliefs, structures, and practices among our religious denominations.

* * *

The bill also recognizes pension boards as acceptable funding media for church plans. A plan or program funded or administered through a pension board, whether a civil law corporation or otherwise, will be considered a church plan, provided the principal purpose or function of this organization is the administration or funding of a plan or program for the provision of retirement or welfare benefits for the employees of a church.

The organization must also be controlled by or associated with a church exempt from tax under section 501(a). It is intended that no church plan administered or funded by a pension board would be disqualified merely because it is separately incorporated or merely because of variations in plan provisions among the local employers.

* * *

The problems the churches face are immediate. They are concerned today that their plans may be presently disqualified as church plans. This is a matter we must not put off until 1982.

June 7, 1978 - 124 Cong. Rec. 16,518-19:

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first time and, by unanimous consent, the second time, and referred as indicated:

* * *

By Mr. TALMADGE (for himself and Mr. BENTSEN):

S. 3172. A bill to amend the Internal Revenue Code of 1954 to permit a church plan to continue after 1982 to provide benefits for employees of organizations controlled by or associated with the church and to make certain clarifying amendments to the definition of church plan; to the Committee on Finance.

* * *

By Mr. TALMADGE (for himself and Mr. BENTSEN):

S. 3182. A bill to amend the Employee Retirement Income Security Act of 1974 to permit a church plan to continue after 1982 to provide benefits for employees of organizations controlled by or associated with the church and to make certain clarifying amendments to the definition of church plan; to the Committee on Finance and the Committee on Human Resources, jointly, by unanimous consent.

June 7, 1978 - 124 Cong. Rec. 16,519, 16,522-23:

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

* * *

DEFINITION OF CHURCH PLAN

Mr. TALMADGE. Mr. President, with my colleague, Senator BENTSEN of the State of Texas, I am introducing bills to amend the definition of "church plan" found at section 414(e) of the Internal Revenue Code and section 3(33) of the Employee Retirement Income Security Act of 1974. All of the major church denominations in this country—Protestant, Catholic, and

Jewish—are of one accord in this matter. They need and desire relief.

When we enacted ERISA in 1974, we set 1982 as the date beyond which a church plan could no longer provide retirement and welfare benefits for employees of church agencies. We also forbade the church plans to provide any new agency coverage after 1974.

* * *

The church plans in this country have historically covered both ministers and lay employees of churches and church agencies. These plans are some of the oldest retirement plans in the country. Several date back to the 1700's. The average age of a church plan is at least 40 years. To comply with ERISA by 1982, the churches must divide their plans into two so that one will cover church employees and the other, agency employees. It is no small task to break up a plan that has been in existence for decades, even centuries.

The estimated legal, actuarial, and accounting costs of the initial division of church plans and the additional continuing costs of maintaining two separate plans are so significant that reduced retirement and other benefits may result unless they can be assimilated. To offset these additional costs, the churches are confronted with a very large, and possibly not absorbable, economic burden, merely to provide pre-ERISA level of benefits. There is no imposition by ERISA of such moment on the plans of other organizations.

Church agencies are essential to the churches' mission. They care for the sick and needy and disseminate religious instruction. They are, in fact, part of the churches. As a practical matter, it is doubtful that

the agency plans would survive subjection to ERISA. There is an essential difference between the plans of business and the plans of church institutions. If a business incurs increased plan maintenance costs, it merely passes these on to the consumer. The incomes of most church agencies, on the other hand, are dependent solely upon tithes and other offerings. There is virtually no way for them to compensate for the additional costs of complying with ERISA. The churches fear that many of the agencies would abandon their plans. We are concerned today that the requirements of ERISA has made the maintenance of plans too expensive and demanding even for businesses which have the capacity to absorb additional costs. The impact of ERISA on church agencies would be many times as serious as that on businesses.

Ministers and lay employees have a unique need to be covered by one plan. Employment is extremely fluid within our denominations. A minister will frequently move from church to agency, or wherever his services are most needed. If he cannot be covered by one plan, gaps in coverage may occur because the agency may not have a plan or may have a waiting period before participation. If the church plan definition is allowed to remain, ministers and lay employees will not be able to purse their missions nearly as freely as they have in the past. It is inescapable that they way or churches have functioned will be directly affected.

* * *

Most church plans of congregational denominations are administered by a pension board. This is usually an organization separately incorporated from, but

controlled by, the denomination. Under the church plan definition, there is a question whether the plan is established by a church, as it must be, or by a pension board.

* * *

In a corporate structure lines of authority are clear. One plan covering the employees of a parent and its subsidiaries can easily meet the requirements of law because of the control executed by the parent. As I have stated, a congregational denomination cannot force the agencies to observe the requirements of ERISA. Accordingly, there is little hope that a plan established by a congregational church for its agencies could comply with ERISA.

Mr. President, these and other problems over the church plan definition under present law confront the churches today. They are worried that their plans do not now meet the church plan requirements and concerned over the impending restructuring of their plans. It is time we remove the churches from this statutory cloud. If we have enacted a statute that may require the church plans to come under ERISA, file reports, be subject to the examination of books and records and possible foreclosure of church property to satisfy plan liabilities, it must be changed because we have clearly created an excessive government entanglement with religion.

Under the provisions of our bills, effective as of January 1, 1974, a church plan shall be able to continue to cover the employees of church-associated organizations. There will be no need to separate the employees of church agencies from the church plan. The bills re-

tain the definition of church plan as a plan established and maintained for its employees by a church or by a convention or association of churches exempt from tax under section 501. However, to accommodate the differences in beliefs, structures, and practices among our religious denominations, all employees are deemed to be employed by the denomination. The term employee is also redefined to include: ... an employee of an organization which is exempt from tax and which is controlled by or associated with the church.

* * *

A plan or program funded or administered through a pension board, whether a civil law corporation or otherwise, will be considered a church plan, provided the principal purpose or function of the pension board is the administration or funding of a plan or program for the provision of retirement or welfare benefits for the employees of a church. The pension board must also be controlled by or associated with a church exempt from tax under section 501. No church plan administered or funded by a pension board would be disqualified merely because it is separately incorporated or merely because of variations in the plan provisions among the local employers.

Sept. 8, 1978 - 124 Cong. Rec. 28,543:

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

* * *

By Mr. CONABLE (for himself and Mr. YOUNG of Florida):

H.R. 14021. A bill to amend the Internal Revenue Code of 1954 to permit a church plan to continue after 1982 to provide benefits for employees of organizations controlled by or associated with the church and to make certain clarifying amendments to the definition of church plan; to the Committee on Ways and Means.

Oct. 10, 1978 - 124 Cong. Rec. 35,194:

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

* * *

By Mr. CONABLE (for himself and Mr. CORMAN):

* * *

H.R. 14273. A bill to amend the Employee Retirement Income Security Act of 1974 to permit a church plan to continue after 1982 to provide benefits for employees of organizations controlled by or associated with the church and to make certain clarifying amendments to the definition of church plan; jointly, to the Committees on Education and Labor, and Ways and Means.

H.R. 14274. A bill to amend the Internal Revenue Code of 1954 to permit a church plan to continue after 1982 to provide benefits for employees of organizations controlled by or associated with the church and

to make certain clarifying amendments to the definition of church plan; to the Committee on Ways and Means.

Jan. 29, 1979 - 125 Cong. Rec. 1356:

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

* * *

By Mr. CONABLE:

* * *

H.R. 1576. A bill to amend the Internal Revenue Code of 1954 to permit a church plan to continue after 1982 to provide benefits for employees of organizations controlled by or associated with the church and to make certain clarifying amendments to the definition of church plan; to the Committee on Ways and Means.

* * *

H.R. 1578. A bill to amend the Employee Retirement Income Security Act of 1974 to permit a church plan to continue after 1982 to provide benefits for employees of organizations controlled by or associated with the church, and to make certain clarifying amendments to the definition of church plan; jointly to the Committees on Education and Labor, and Ways and Means.

Feb. 7, 1979 - 125 Cong. Rec. 2024-25:

140 BILLS JOINTLY REFERRED IN THE 95TH CONGRESS (1977-78)

* * *

S. 3182: TALMADGE; Amend the Employee Retirement Income Security Act of 1974 to permit a church plan to continue after 1982 to provide benefits for employees of organizations controlled by or associated with the church; Human Resources, Finance.

May 7, 1979 - 125 Cong. Rec. 10,042:

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

* * *

By Mr. TALMADGE (for himself, Mr. BENTSEN, and Mr. BOREN):

S. 1090. A bill to amend the Employee Retirement Income Security Act of 1974 to permit a church plan to continue after 1982 to provide benefits for employees of organizations controlled by or associated with the church and to make certain clarifying amendments to the definition of church plan; to the Committee on Finance and the Committee on Labor and Human Resources, jointly, by unanimous consent.

S. 1091. A bill to amend the Internal Revenue Code of 1954 to permit a church plan to continue after 1982 to provide benefits for employees of organizations controlled by or associated with the church and to make certain clarifying amendments to the definition of church plan; to the Committee on Finance.

May 7, 1979 - 125 Cong. Rec. 10,052-53:

LEGISLATION REGARDING CHURCH PENSION PLANS AND RELATED REFORM OF ERISA

Mr. TALMADGE. Mr. President, with my colleagues Senators BENTSEN and BOREN, I am reintroducing legislation to amend the definition of "church plan" found at section 414(e) of the Internal Revenue Code and section 3(33) of the Employee Retirement Income Security Act of 1974, which I introduced in the 95th Congress. All of the major church denominations in the country—Protestant, Catholic and Jewish—are of one accord in this matter. They need and desire relief.

When we enacted ERISA in 1974, we set 1982 as the date beyond which a church plan could no longer provide retirement and welfare benefits for employees of church agencies. We also forbade the church plans to provide any new agency coverage after 1974. Moreover, as I will explain later, the church plan definition is so narrow that it almost completely fails to consider the way our church plans have for decades operated. At this moment our churches are justifiably concerned that their plans do not meet the church plan requirements and are, therefore, subject to ERISA.

* * *

To comply with ERISA by 1982, the churches must divide their plans into two so that one will cover church employees and the other, agency employees. It is no small task to break up a plan that has been in existence for decades, even centuries.

The estimated legal, actuarial, and accounting costs of the initial division of church plans and the additional continuing costs of maintaining two separate

plans are so significant that reduced retirement and other benefits may result unless they can be assimilated. To offset these additional costs, the churches are confronted with a very large, and possibly not absorbable, economic burden, merely to provide pre-ERISA level of benefits. There is no imposition by ERISA of such moment on the plans of other organizations.

Church agencies are essential to the churches' mission. They are for the sick and needy and disseminate religious instruction. They are, in fact, part of the churches. As a practical matter, it is doubtful that the agency plans would survive subjection to ERISA. There is an essential difference between the plans of business and the plans of church institutions. If a business incurs increased plan maintenance costs, it merely passes these on to the consumer. The incomes of most church agencies, on the other hand, are dependent solely upon tithes and other offerings. There is virtually no way for them to compensate for the additional costs of complying with ERISA. The churches fear that many of the agencies would abandon their plans. We are concerned today that the requirements of ERISA has made the maintenance of plans too expensive and demanding even for businesses which have the capacity to absorb additional costs. The impact of ERISA on church agencies would be many times as serious as that on businesses.

Ministers and lay employees have a unique need to be covered by one plan. Employment is extremely fluid within our denominations. A minister will frequently move from church to agency, or wherever his services are most needed. If he cannot be covered by

one plan, gaps in coverage may occur because the agency may not have a plan or may have a waiting period before participation. If the church plan definition is allowed to remain, ministers and lay employees will not be able to pursue their missions nearly as freely as they have in the past. It is inescapable that the way our churches have functioned will be directly affected.

* * *

Most church plans of congregational denominations are administered by a pension board. This is usually an organization separately incorporated from, but controlled by, the denomination. Under the church plan definition, there is a question whether the plan is established by a church, as it must be, or by a pension board. This requirement also points up the inapplicability of the church plan definition to congregational churches. In this type of church, the denomination has little, if any, control over the local churches. Some differences in plan provisions occur, because the denomination cannot enforce uniformity, and the question whether the plan is maintained by the denomination or by the local churches is raised.

* * *

In a corporate structure lines of authority are clear. One plan covering the employees of a parent and its subsidiaries can easily meet the requirements of law because of the control executed by the parent. As I have stated, a congregational denomination cannot force the agencies to observe the requirements of ERISA. Accordingly, there is little hope that a plan established by a congregational church for its agencies could comply with ERISA.

Mr. President, these and other problems over the church plan definition under present law confront the churches today. They are worried that their plans do not now meet the church plan requirements and concerned over the impending restructuring of their plans. It is time we remove the churches from this statutory cloud. If we have enacted a statute that may require the church plans to come under ERISA, file reports, be subject to the examination of books and records and possible foreclosure of church property to satisfy plan liabilities, it must be changed because we have clearly created an excessive Government entanglement with religion.

Under the provisions of our proposals, effective as of January 1, 1974, a church plan shall be able to continue to cover the employees of church-associated organizations. There will be no need to separate the employees of church agencies from the church plan. Our legislations retains the definition of church plan as a plan established and maintained for its employees by a church or by a convention or association of churches exempt from tax under section 501. However, to accommodate the differences in beliefs, structures, and practices among our religious denominations, all employees are deemed to be employed by the denomination. The term employee is also redefined to include:
... an employee of an organization which is exempt from tax and which is controlled by or associated with the church;

* * *

A plan or program funded or administered through a pension board, whether a civil law corporation or otherwise, will be considered a church plan, provided

the principal purpose or function of the pension board is the administration or funding of a plan or program for the provision of retirement or welfare benefits for the employees of a church. The pension board must also be controlled by or associated with a church exempt from tax under section 501. No church plan administered or funded by a pension board would be disqualified merely because it is separately incorporated or merely because of variations in the plan provisions among the local employers.

Sept. 5, 1979 - 125 Cong. Rec. 23,133-34:

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

* * *

By Mr. QUILLEN:

H.R. 5171. A bill to amend the Internal Revenue Code of 1954 to permit a church plan to continue after 1982 to provide benefits for employees of organizations controlled by or associated with the church and to make certain clarifying amendments to the definition of church plan; to the Committee on Ways and Means.

* * *

H.R. 5173. A bill to amend the Employee Retirement Income Security Act of 1974 to permit a church plan to continue after 1982 to provide benefits for employees of organizations controlled by or associated with the church and to make certain clarifying amendments to the definition of church plan; jointly, to the

Committees on Education and Labor and Ways and Means.

Sept. 11, 1979 - 125 Cong. Rec. 24,085-86:

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

* * *

By. Mr. SATTERFIELD:

* * *

H.R. 5239. A bill to amend the Internal Revenue Code of 1954 to permit a church plan to continue after 1982 to provide benefits for employees of organizations controlled by or associated with the church and to make certain clarifying amendments to the definition of church plan; to the Committee on Ways and Means.

H.R. 5240. A bill to amend the Employee Retirement Income Security Act of 1974 to permit a church plan to continue after 1982 to provide benefits for employees of organizations controlled by or associated with the church and to make certain clarifying amendments to the definition of church plan; jointly, to the Committees on Education and Labor and Ways and Means.

Sept. 18, 1979 - 125 Cong. Rec. 25,146-47:

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

* * *

By Mr. WRIGHT:

H.R. 5314. A bill to amend the Internal Revenue Code of 1954 to permit a church plan to continue after 1982 to provide benefits for employees of organizations controlled by or associated with the church, and to make certain clarifying amendments to the definition of church plan; to the Committee on Ways and Means.

* * *

H.R. 5316. A bill to amend the Employee Retirement Income Security Act of 1974 to permit a church plan to continue after 1982 to provide benefits for employees of organizations controlled by or associated with the church and to make certain clarifying amendments to the definition of church plan; jointly, to the Committee on Education and Labor and Ways and Means.

Dec. 1, 1979:

DESCRIPTION OF BILLS RELATING TO DEFERRED COMPENSATION PLANS, PENSION PLANS AND EMPLOYEE STOCK OWNERSHIP PLANS

SCHEDULED FOR A HEARING BY THE SUBCOMMITTEE ON PRIVATE PENSION PLANS AND EMPLOYEE FRINGE BENEFITS OF THE COMMITTEE ON FINANCE ON DECEMBER 4-5 1979

* * *

[pp. 3-4]

3. S. 1090 and S. 1091—Senators Talmadge, Bentsen and Boren

Church Plans Permitted to Continue after 1982 to Provide Benefits for Employees of Organizations Controlled by or Associated With Churches

Under present law, the church plan rules (including exemption from post-ERISA tax-qualification standards) are applicable with respect to coverage of employees of a church-related agency only for plans in existence on January 1, 1974, and only until January 1, 1983.

The bill would apply the church plan rules regarding coverage of employees of church-related agencies to plans not yet in existence on January 1, 1974, and would remove the December 31, 1982, expiration date for the rules.

* * *

[p. 8]

3. S. 1090 and S. 1091—Senators Talmadge, Bentsen and Boren

Church Plans Permitted to Continue After 1982 to Provide Benefits for Employees of Organizations Controlled by or Associated with Churches

Present law

Under present law, the standards provided by the labor law provisions of ERISA generally do not apply to the pension plan of a church for its employees. Church plans are also generally exempt from the tax qualification standards which correspond to the labor standards.

Under present law, a church plan may cover employees of a tax-exempt agency related to a church only if the plan was in existence on January 1, 1974. For taxable years beginning after December 31, 1982, a church plan no longer will be able to cover such employees.

Explanation of the bill

The bill would permit a church plan to cover employees of a tax-exempt agency controlled by or affiliated with a church or a convention or association of churches. This would include ministers and other clerical employees as well as lay employees of the church agency. Thus, for plans in existence on January 1, 1974, present law would be continued after December 31, 1982, and for other plans present law would be modified. Also, the bill would provide a period of time during which a plan intended to qualify

as a church plan but failing to do so could be amended to so qualify without penalty.

Effective date

The provisions of the bill would be effective as of January 1, 1974.

Dec. 4, 1979:

HEARINGS BEFORE THE SUBCOMMITTEE ON PRIVATE PENSION PLANS AND EMPLOYEE FRINGE BENEFITS OF THE COMMITTEE ON FINANCE UNITED STATES SENATE, NINETY-SIXTH CONGRESS

* * *

[pp. 364-65]

STATEMENT OF HON. HERMAN E. TALMADGE, U.S. SENATOR

* * *

In drafting the Employee Retirement Income Security Act of 1974, which is called ERISA, Congress recognized that there were serious Constitutional objections to subjecting the churches, through their plans, to the examination of books and records and possible levy on church property to satisfy plan liabilities. As a consequence, "church plans" were excluded from the purview of ERISA. However, the exclusionary language was drafted in terms of hierarchical churches and did not give consideration to the special problems of religious organizations that are operated on a congregational basis. Equally important, at the last moment in the drafting process, it was decided that the church plan exemption would not apply if church

agencies were retained in church plans. A transitional rule does permit church plans in existence at the time of ERISA to cover church agencies until December 31, 1982.

* * *

S. 1090 and 1091 are companion bills dealing with the definition of church plan in Title I of ERISA and the Internal Revenue Code, respectively. These would clarify the definition of church plan and permit such a plan to cover agencies carrying out the religious missions of the church.

* * *

A church plan is presently defined as a plan established and maintained for its employees by a church or by a convention or association of churches.[1] The definition further provides that until December 31, 1982, the plan may cover the employees of a church agency, but not after that date if it is to be considered a church plan. Even where this transitional rule applies, a church plan has been precluded from including the employees of agencies if the plan was not maintained for those agencies on January 1, 1974.

The churches of this country are faced with the dilemma of subjecting their pension and welfare benefit plans to the provisions of ERISA if they wish to retain their agencies in these plans after 1982. It is unreasonable of us to expect a church to waive its Constitutional privileges by continuing to cover agency employees after that date. Therefore, by 1983 the churches must choose between two alternatives. They

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[1] Section (3)(33), Title I, ERISA; Section 414(e), IRC.

may establish a separate plan meeting ERISA standards for the employees of their agencies, or they may abandon the coverage of agency employees. Either choice will be a costly and painful experience. It is impossible at this time to predict what alternative the churches will choose, but the costs of undoing years of experience and establishing and maintaining two separate plans may be too much for the churches and agencies to bear. In this case, agencies whose employees are now covered by the church plan will be forced to abandon their retirement and welfare programs or, in the alternative, seek coverage from non-church sources, which may prove to be too expensive or too burdensome to undertake, particualrly [sic] in the case of small agencies. To those of us who are sponsoring these bills, this result seems unfair and inconsistent with the principles of ERISA which were to foster retirement and welfare benefit coverage.

Church agencies are such eleemosynary institutions as schools, colleges, missions, convents, hospitals, orphanages, summer camps, drug abuse centers, inner city agencies, nursing and retirement homes, and day care centers. They are considered by the churches as one means by which they fulfill their missions. They are also considered as part of the churches. Many are very small and rely on contributions to meet operating expenses. If they are forced out of church plans in 1983, they may be unable to incur the increased costs of providing alternatives. Many, we fear, will cease to provide retirement and welfare benefit coverage. The Comptroller General and The Pension Benefit Guaranty Corporation have studied the impact of ERISA on small retirement plans. These studies indicate that a significant number of small plans have terminated

since 1974. Of these, a large number have cited ERISA as a major factor. My colleagues and I do not want ERISA to be the cause of the termination of retirement and welfare benefit programs for church agencies.

S. 1090 and 1091 will permit a church plan to continue to provide retirement and welfare benefits for agency employees, including the employees of agencies coming into existence after January 1, 1974, without sacrificing its church plan exemption. This concept of one plan for both church and agency employees is critical for a further reason. It allows ministers and lay employees to move from church to agency and back without gaps in plan coverage and with coverage by one retirement system. These two bills also make a number of technical corrections in the church plan definition, mainly to take into account the structural differences between our congregational denominations and our hierarchical denominations.

June 12, 1980:

Stenographic Transcript Of HEARINGS Before The COMMITTEE ON FINANCE, UNITED STATES SENATE, EXECUTIVE SESSION

* * *

[pp. 39-40]

Senator Talmadge. All right. Now I have one. I will state it very briefly. This is cosponsored by Senator Bentsen and Boren, working closely with representatives of 27 major church denominations from across the nation. I introduced this 1090 and its companion

tax bill, S. 1091, to protect the viability of church retirement plans.

The problem that church plans face is one of definition. Under current law, both ERISA and the Internal Revenue Code, define such plans to include not only church plans covering church employees but also plans covering employees of church-affiliated organizations.

For example, the church plan might cover the employees of a church-related hospital, university or retirement home. As you might expect, this is a common practice of many churches throughout the United States. However, unless we act to preserve the longstanding definition of church plans, the law as it currently reads will phase out this definition beginning in 1983.

S. 1090 and S. 1091 make the amendments necessary to continue the current church plan definition. The definition would also be expanded to include church plans which rather than being maintained directly by a church are instead maintained by a pension board maintained by a church.

June 12, 1980:

Press Release
United States Senate Committee on Finance

FINANCE COMMITTEE ORDERS FAVORABLY REPORTED S. 1076, THE MULTIEMPLOYER PENSION PLAN AMENDMENTS ACT OF 1980

* * *

MISCELLANEOUS ERISA PROVISIONS

In addition to the provisions relating to multiemployer plans, the Committee bill includes the provisions below relating to the Employee Retirement Income Security Act of 1974 (ERISA).

a. Church pension plans. — The Committee agreed that the current definition of church plan would be continued without reference to dates. The definition would be clarified to include plans maintained by a pension board maintained by a church. The definition of the term "employee" of a church would be expanded to include, for example, a church minister in the exercise of his ministry (regardless of the source of his compensation) and certain former church plan participants. In addition, a notice and correction procedure for the amendment of church plans would be created.

June 18, 1980 - 126 Cong. Rec. 15,226:

ADDITIONAL COSPONSORS

S. 1091

At the request of Mr. TALMADGE, the Senator from Missouri (Mr. DANFORTH) was added as a cosponsor of S. 1091, a bill to amend the Internal Review code of

1954 to permit a church plan to continue after 1982 to provide benefits for employees of organizations controlled by or associated with the church and to make clarifying amendments to the definition of church plan.

July 24, 1980 - 126 Cong. Rec. 19,598-99:

REPORTS OF COMMITEES

The following reports of committees were submitted:

By Mr. WILLIAMS, from the Committee on Labor and Human Resources and the Committee on Finance, jointly, with an amendment:

S. 1076. A bill to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1954, as amended, . . .

Mr. LONG. Mr. President, in connection with the filing of S. 1076, the multiemployer pension plan bill, for myself and Senator WILLIAMS, I ask unanimous consent that there being printed in the RECORD at this point a summary of the bill as reported.

There being no objection, the summary was ordered to be printed in the RECORD, as follows:

SUMMARY OF S. 1076

* * *

10. Miscellaneous ERISA Provisions.

The present law definition of the term "church plan" is continued without reference to dates, so that a church plan which covers the employees of a church agency generally would be exempt from the provisions

of ERISA. In addition, certain definitions relating to church plans are clarified.

July 29, 1980 - 126 Cong. Rec. 20,189-92, 20,208:

JOINT EXPLANATION OF S. 1076:
MULTIEMPLOYER PENSION PLAN
AMENDMENTS ACT OF 1980

* * *

II. SUMMARY OF THE BILL

* * *

10. Miscellaneous ERISA provisions.

The present-law definition of the term "church plan" is continued without reference to dates, so that a church plan which covers the employees of a church agency generally would be exempt from the provisions of ERISA. In addition, certain definitions relating to church plans are clarified.

* * *

IV. EXPLANATION OF PROVISIONS

* * *

V. Church Plans Permitted to Continue After 1982 to Provide Benefits for Employees of Organizations Controlled by or Associated with Churches.

Present law.

Under present law, the standards provided by the labor law provisions of ERISA generally do not apply to the pension plan of a church for its employees. Church plans are also generally exempt from the tax qualification standards which correspond to the labor standards.

Under present law, a church plan may cover employees of a tax-exempt agency related to a church only if the plan was in existence on January 1, 1974. For taxable years beginning after December 31, 1982, a church plan no longer will be able to cover such employees.

Reason for change.

The Committees believe that plans maintained by churches should be allowed to cover all employees of related tax-exempt agencies.

Explanation of the bill.

The bill would permit a church plan to cover employees of a tax-exempt agency controlled by or affiliated with a church or a convention or association of churches. This would include ministers and other clerical employees as well as lay employees of the church agency. Thus, for plans in existence on January 1, 1974, present law would be continued after December 31, 1982, and for other plans present law would be modified. Also, the bill would provide a period of time during which a plan intended to qualify a church plan but failing to do so could be amended to so qualify without penalty.

July 29, 1980 - 126 Cong. Rec. 20,245:

Mr. TALMADGE. Mr. President, I understood that many church plans are maintained by separately incorporated organizations called pension boards. These boards have historically been considered by church denominations as parts of their church. May

I ask whether the bill would enable a church pension board to maintain a church plan?

Mr. LONG. Yes I concur that a pension board that provides pension or welfare benefits for persons carrying out the work of the church and without whom the church could not function is an integral part of the church and is engaged in the functions of the church, even though separately incorporated. Nevertheless, we believed that the church plan definition should be clarified. The bill recognizes the status of a church plan maintained by a pension board by providing that a plan maintained by an organization, whether separately incorporated or not, the principal purpose of which is the administration or funding of a plan or program for the provision of retirement or welfare benefits for the employees of a church, is a church plan, provided such organization is controlled by or associated with the church.

Aug. 15, 1980:

SENATE LABOR AND HUMAN RESOURCES
COMMITTEE
HOUSE BILLS
H.R. 3904
AUGUST 15, 1980

* * *

Miscellaneous ERISA Provisions

a. Church pension plans.—The committee agreed that the current definition of church plan would be continued without reference to dates. The definition would be clarified to include plans maintained by a pension board maintained by a church. The definition

of the term "employee" of a church would be expanded to include, for example, a church minister in the exercise of his ministry (regardless of the source of his compensation) and certain former church plan participants. In addition, a notice and correction procedure for the amendment of church plans would be created.

Aug. 25, 1980 - 126 Cong. Rec. 23,049:

MR. ULLMAN. Mr. Speaker, H.R. 3904, the Multiemployer Pension Plan Amendments Act, is the product of many months of hard work and cooperation between the Committee on Ways and Means and the Committee on Education and Labor. The House version of this legislation passed the House without a dissenting vote on May 22.

* * *

The rule allows for an amendment that accepts several Senate changes in H.R. 3904. However, the balance of the House version of the bill is not substantially disturbed.

* * *

The House would agree with the "church plan" amendment providing that the current ERISA definition of church plan would be continued without reference to dates. The definition would be clarified to include plans maintained by a pension board maintained by a church. The definition of the term "employee" of a church would be expanded to include for example, a church minister in the exercise of his ministry, regardless of the source of his compensation,

and certain former church plan participants. In addition, a notice and correction procedure for the amendment of church plans would be created.

APPENDIX C

ERISA-Compliant Plans of Petitioners[2]

Dignity Health

1. **Dignity 401(k) Plan**, *see* Oct. 18, 2016 Form 5500, https://goo.gl/LKnXe0.
2. **Dignity Short Term Disability Plan**, *see* Aug. 16, 2015 Form 5500, https://goo.gl/XUQxhv.
3. **Dignity Dependent Life Ins. Plan**, *see* Aug. 16, 2015 Form 5500, https://goo.gl/5RXB8b.
4. **Dignity Welfare Benefits Plan**, *see* Aug. 16, 2015 Form 5500, https://goo.gl/jMcsoh.
5. **St. Mary's Hosp. & Med. Cent. Emp. Benefit Plan**, *see* Oct. 11, 2008 Form 5500, https://goo.gl/aipdi4.

Advocate Health Care Network

1. **Advocate Ret. Sav. Plan 401(k)**, *see* Oct. 10, 2016 Form 5500, https://goo.gl/ZHF9jF.
2. **Dreyer Clinic, Inc. Emps. Ret. Plan**, *see* Oct. 12, 2015 Form 5500, https://goo.gl/LkxzQV.
3. **Dreyer Med. Grp., LTD. Emps'. Ret. Plan**, *see* Oct. 10, 2016 Form 5500, https://goo.gl/xgcams.
4. **Dreyer Clinic. Inc. Comprehensive Health Care Plan**, *see* Oct. 10, 2016 Form 5500, https://goo.gl/EZuSnr.
5. **Dreyer Med. Grp., LTD Comprehensive Health Care Plan**, *see* Oct. 10, 2016 Form 5500, https://goo.gl/etY4M0.
6. **Condell Health Network Ret. Plan**, *see* Oct. 10, 2016 Form 5500, https://goo.gl/TFbUqq.

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[2] All Form 5500s cited were filed with the United States Department of Labor and are available at the URL provided (requires free registration).

7. **Bromenn Healthcare 403 (B) Plan**, *see* July. 21, 2014 Form 5500, https://goo.gl/NUxwVL.

8. **Bromenn Physicians MGMT Corp. 401(K) Salary Reduction Plan & Trust**, *see* July 26, 2011 Form 5500, https://goo.gl/6Sxdh8.

9. **Bromenn Emp. HMO Plan**, *see* Jan. 6, 2011 Form 5500, https://goo.gl/v2mwb7.

10. **Grp. Life, Disability, AD & D**, *see* Jan. 6, 2011 Form 5500, https://goo.gl/9IvRjP.

11. **Vision Ins.**, *see* Jan. 6, 2011 Form 5500, https://goo.gl/FDCB49.

12. **Dental Ins.**, *see* Jan. 6, 2011 Form 5500, https://goo.gl/iggtN0.

13. **PPO Health Ins. Plan**, *see* Dec. 17, 2014 Form 5500, https://goo.gl/ZhmWCO.

14. **Condell Med. Cent. 401(k) Ret. Sav. Plan**, *see* 2008 Form 5500, https://goo.gl/uxWJxn.

Saint Peter's

1. **St. Peter's 403(b) DC Plan**, *see* Oct. 17, 2016 Form 5500, https://goo.gl/6KiqiB.

2. **St. Peter's Med., Dental & Vision Ins. Plan**, *see* May 2, 2016 Form 5500, https://goo.gl/HUNi3z.

3. **St. Peter's Long Term Disability Plan**, *see* May 2, 2016 Form 5500, https://goo.gl/nCAHWy.

ERISA-Compliant Plans of Other Firms Listed at 16-74 Pet. 13 n.8

Catholic Health East (CHE)

1. **CHE Emp. 403(B) Plan for Ret. Sav.**, *see* July 30, 2014 Form 5500, https://goo.gl/tV70eX.

2. **Ne. Health Emp'r Ret. Plan**, *see* Oct. 15, 2014 Form 5500, https://goo.gl/h5XMya.

3. **CHE Emp. 401(k) Plan for Ret. Sav.**, *see* Sept. 26, 2015 Form 5500, https://goo.gl/tMyDvB.

4. **St. Joseph Hosp. Ret. Income Plan,** *see* Oct 9, 2007 Form 5500, https://goo.gl/ETyMEP.

Ascension Health

1. **Ascension ERISA TSA Sav. Plan,** *see* July 7, 2016 Form 5500, https://goo.gl/yFVuH8.

2. **Ascension 401(k) Ret. Sav. Plan,** *see* Oct. 12, 2016 Form 5500, https://goo.gl/QSBBjG.

3. **Ascension Bus. Travel Accident Plan**, *see* Oct. 10, 2014 Form 5500, https://goo.gl/vwmFTZ.

4. **Ascension Long Term Disability Plan for Highly Compensated Emps.**, *see* Oct. 10, 2014 Form 5500, https://goo.gl/pMZdMr.

5. **Ascension Long Term Care Ins. Plan,** *see* Oct. 10, 2014 Form 5500, https://goo.gl/IO1MaB.

6. **Ascension Welfare Benefit Plan,** *see* Oct. 13, 2014 Form 5500, https://goo.gl/G6QZyg.

7. **Ascension Exec. Life Ins.**, *see* Oct. 10, 2014 Form 5500, https://goo.gl/aTYKDE.

8. **Ascension SmartHealth Plan,** *see* Oct. 13, 2014 Form 5500, https://goo.gl/RCOmQk.

9. **Ascension Flexible Spending Account,** *see* Oct. 10, 2014 Form 5500, https://goo.gl/MCfGTH.

10. **Ascension Legal Plan,** *see* Oct. 10, 2014 Form 5500, https://goo.gl/ESWnKY.

11. **Ascension Ret. Health Reimbursement Arrangement,** *see* Oct. 13, 2014 Form 5500, https://goo.gl/FVqBFP.

Catholic Health Initiatives (CHI)

1. **CHI Welfare Benefit Plan**, *see* Oct. 12, 2016 Form 5500, https://goo.gl/sLo3wl.
2. **CHI 401(k) Plan**, *see* Sept. 14, 2016 Form 5500, https://goo.gl/Ws0S0D.
3. **CHI Defined Contribution Ret. Plan**, *see* July 26, 2011 Form 5500, https://goo.gl/GuhVjj.
4. **CHI Ret. Plan for For-Profit Entities**, *see* Oct. 6, 2016 Form 5500, https://goo.gl/IB2mO9.
5. **CHI ERISA Emp. Sav. Plan**, *see* Oct. 6, 2016 Form 5500, https://goo.gl/xa2n3m.
6. **Ret. Plan for Emps. of Mem'l Health Sys. of East Texas**, *see* Oct. 13, 2016 Form 5500, https://goo.gl/bWZ3qo.
7. **Ret. Plan for Emps. of Harrison Mem'l Hosp.**, *see* Oct. 6, 2016 Form 5500, https://goo.gl/Wg9h4v.
8. **Jewish Hosp. & St. Mary's Healthcare [Pension Plan]**, *see* Oct. 8, 2016 Form 5500, https://goo.gl/iSdmT8.
9. **Saint Luke's Health Sys. Ret. Plan**, *see* Oct. 14, 2016 Form 5500, https://goo.gl/Gj1dKR.
10. **Consol. Health Sers., Inc. Ret. Plan**, *see* Oct. 6, 2016 Form 5500, https://goo.gl/T2V7Tb.
11. **Franciscan Servs., Inc. Sav. Plan**, *see* April 6, 2004 Form 5500, https://goo.gl/MYGjvh.
12. **Consol. Health Servs Defined Contribution 401(k) Plan**, *see* Oct. 14, 2014 Form 5500, https://goo.gl/KRp37w.
13. **CHI Health at Home Flexible Spending Benefit Plan**, *see* July 19, 2016 Form 5500, https://goo.gl/SEY-Kos.
14. **Am. Nursing Care Life & STD Plan**, *see* July 19, 2016 Form 5500, https://goo.gl/QhRY5D.

15. **Am. Nursing Care Long Term Disability**, *see* July 19, 2016 Form 5500, https://goo.gl/nsql9g.

16. **Am. Nursing Care, Inc. Health Plan**, *see* July 30, 2015 Form 5500, https://goo.gl/dtK8Zt.

17. **Cigna Dental Plan**, *see* July 28, 2006 Form 5500, https://goo.gl/K1y6iY.

18. **Am. Nursing Care Emp. Assistance Program**, *see* July 30. 2015 Form 5500, https://goo.gl/u0ME7D.

19. **Am. Nursing Care, Inc., Delta Dental Plan**, *see* July 26, 2016 Form 5500, https://goo.gl/bssqpv.

20. **CHI Health at Home Incentive Plan**, *see* July 19, 2016 Form 5500, https://goo.gl/Zdoz80.

21. **Novare Servs, Inc. 401K Plan**, *see* Oct. 12, 2007 Form 5500, https://goo.gl/CFECWN.

22. **CHI Long Term Disability Plan**, *see* Sept. 12, 2008 Form 5500, https://goo.gl/QTC8NN.

23. **23. SCN Health Sys. Ret. Plan for For-Profit Entities**, *see* Oct. 11, 2002 Form 5500, https://goo.gl/48l4yw.

24. **Sisters of Charity of Nazareth Health Sys. 401K Plan**, *see* Oct. 14, 2003 Form 5500, https://goo.gl/creaWp.

25. **CHI Flexchoice Plan**, *see* Aug. 7, 2001 Form 5500, https://goo.gl/yIi6ns.

Trinity Health

1. **Trinity Health Corp. ERISA 403(B) Ret. Plan (Frozen)**, *see* **Sept. 22, 2015 Form 5500, https://goo.gl/ei2zFe.**

2. **Ne. Health Emp'r Ret. Plan**, *see* Oct. 6, 2016 Form 5500, https://goo.gl/xnlQnQ.

3. **Burdette Care Cent., Inc. 403(B) Ret. Sav. Plan FNA CHE Emp. 403(B) Plan for Ret. Sav.**, *see* Oct. 17, 2016 Form 5500, https://goo.gl/jleldx.

4. **Trinity Health Corp. Retiree Welfare Benefit Plan**, *see* Apr. 1, 2016 Form 5500, https://goo.gl/jmC99d.

5. **Trinity Health Corp. Welfare Benefit Plan (504)**, *see* Oct. 14, 2016 Form 5500, https://goo.gl/vrfpgS.
6. **Trinity Health Corp. Welfare Benefit Plan (505)**, *see* Oct. 14, 2016 Form 5500, https://goo.gl/ZC1snP.
7. **Trinity Health 401(k) Ret. Sav. Plan**, *see* Oct. 14, 2016 Form 5500, https://goo.gl/hxxTmz.
8. **CHE 401(k) Sav. Plan**, *see* Oct. 14, 2015 Form 5500, https://goo.gl/DHftFY.

Daughters of Charity Health System (DCHS)

1. **Verity Health Sys. Flexible Benefits Plan**, *see* July 28, 2016 Form 5500, https://goo.gl/OJJr2P.
2. **Verity Health Sys. Ret. Plan Account**, *see* Oct. 17, 2016 Form 5500, https://goo.gl/QKX0SG.
3. **Verity Health Sys. Supplemental Ret. Plan 401(A)**, *see* Oct. 17, 2016 Form 5500, https://goo.gl/EwMC2f.
4. **Verity Health Sys. Ret. Plan (TSA)**, *see* Oct. 17, 2016 Form 5500, https://goo.gl/3BZlQS.
5. **Verity Health Sys. Ret. Plan**, *see* Oct. 14, 2016 Form 5500, https://goo.gl/n6pz6L.
6. **DCHS Med. Found. Bargaining Unit Emps.**, *see* Sept. 11, 2016 Form 5500, https://goo.gl/REY8S1.
7. **DCHS Med. Found. 401(k) Plan**, *see* Sept. 7, 2016 Form 5500, https://goo.gl/2xOAe9.
8. **DCHS Med. Found. Emp. Benefit Plan**, *see* July 28, 2015 Form 5500, https://goo.gl/phlROK.

Providence Health

1. **Willamette Falls Hosp. Pension Plan**, *see* Oct. 17, 2016 Form 5500, https://goo.gl/ZHygfd.
2. **Swedish Health Servs. Pension Plan**, *see* Oct. 17, 2016 Form 5500, https://goo.gl/mkgclu.

3. **Multiple Emp'r 401(k) Plan**, *see* Oct. 17, 2016 Form 5500, https://goo.gl/8gl9zI.

4. **Providence Health & Servs. Health & Welfare Benefit Plan**, *see* Oct. 11, 2016 Form 5500, https://goo.gl/71A0a9.

5. **Providence Health Sys. – Oregon Region Staff Reassignment & Reduction Plan**, *see* Sept. 27, 2013 Form 5500, https://goo.gl/VMPASp.

6. **Providence Health Sys. – Oregon Emp. Health Plan**, *see* Aug. 7, 2013 Form 5500, https://goo.gl/LTqfDj.

7. **Providence Health Sys., Oregon Region, Emp. Assistance Plan**, *see* Aug. 7, 2013 Form 5500, https://goo.gl/kT11Ky.

8. **Providence Health Sys., Oregon Region, Prescription Discount Program**, *see* Aug. 7, 2013 Form 5500, https://goo.gl/9eY5vG.

9. **PHS, SC Flexselect Welfare Benefit Plan**, *see* Aug. 7, 2013 Form 5500, https://goo.gl/v6cZSL.

10. **Providence Health & Servs. 403(B) Value Plan**, *see* Oct. 17, 2016 Form 5500, https://goo.gl/wR7RFL.

11. **Providence Health & Servs. 403(B) Basic Plan**, *see* Oct. 17, 2016 Form 5500, https://goo.gl/3s0Oqh.

12. **PHS, SC Grp. Life Ins. Plan**, *see* Feb. 21, 2011 Form 5500, https://goo.gl/67unI1.

13. **PHS, SC, LTD Ins. Plan**, *see* Feb. 21, 2011 Form 5500, https://goo.gl/2Vjywl.

14. **Providence Health Care Ret.** Sav. Plan, *see* Oct. 10, 2016 Form 5500, https://goo.gl/53NwWv.

15. **Providence Hood River Mem'l Hosp. 401K Profit Sharing Plan**, *see* Sept. 22, 2008 Form 5500, https://goo.gl/zNkbql.

16. **Exec. Long Term Disability Ins. Program**, *see* May 1, 2011 Form 5500, https://goo.gl/C69Nh6.

17. **Providence Health Sys. Travel Accident Plan**, *see* May 1, 2011 Form 5500, https://goo.gl/92exzN.
18. **Providence Health Sys. Director Severance Plan**, *see* July 27, 2006 Form 5500, https://goo.gl/O1LLxL.
19. **Sacred Heart Med. Cent. Beneflex Cafeteria Plan**, see July 12, 2011 Form 5500, https://goo.gl/8cPbtg.

Presence Health

1. **Presence Ventures, Inc. Ret. Sav. Plan 401(k)**, *see* Oct. 17, 2016 Form 5500, https://goo.gl/iZnh0Q.
2. **Provena Health For-Profit Emps. Pension Plan**, *see* Oct. 17, 2016 Form 5500, https://goo.gl/yjS0vY.
3. **West Suburban Health Care Ret. Income Plan**, *see* Oct. 17, 2016 Form 5500, https://goo.gl/2Lsej6.
4. **Presence Health Emp. Welfare Benefit Plan**, *see* Oct. 17, 2016 Form 5500, https://goo.gl/uiSUKT.

St. Francis Hospital Medical Center (St. Francis)

1. **St. Francis LTD & STD Ins.**, *see* July 26, 2016 Form 5500, https://goo.gl/9wKNOa.
2. **St. Francis Medicare Supplement Ins.**, *see* July 27, 2016 Form 5500, https://goo.gl/WRQOE3.
3. **St. Francis Aetna Grp. Life Ins.**, *see* July 27, 2016 Form 5500, https://goo.gl/7n08vT.
4. **St. Francis Metlife**, *see* July 27, 2016 Form 5500, https://goo.gl/98cvwc.
5. **St. Francis Grp. Travel Accident**, *see* July 27, 2016 Form 5500, https://goo.gl/L9v8Bn.
6. **St. Francis Open Access POS Plan**, *see* July 27, 2016 Form 5500, https://goo.gl/2aXGaQ.
7. **St. Francis Life, Dental, Short Term Disability**, *see* July 27, 2016 Form 5500, https://goo.gl/xb4PQR.

St. Elizabeth Medical Center, Inc.,

1. **The St. Luke Hosp., Inc. Pension Plan**, *see* Oct. 17, 2016 Form 5500, https://goo.gl/HBxWOp.
2. **St. Elizabeth Med. Cent. Options Plan**, *see* July 27, 2001 Form 5500, https://goo.gl/gB11FX.
3. **Kentucky Diagnostic Cent. 401(k) Plan**, *see* Oct. 17, 2011 Form 5500, https://goo.gl/B6gRsg.

Mercy Health

1. **Tyler Mem'l Hosp. Pension Plan**, *see* Oct. 14, 2016 Form 5500, https://goo.gl/ClSAnI.
2. **Mercy Health Ret Sav. Plan 403(B)**, *see* Oct. 14, 2016 Form 5500, https://goo.gl/oiYYBZ.
3. **Mercy Health Ret. Sav. Plan 401**, *see* Oct. 14, 2016 Form 5500, https://goo.gl/U6i2Ex.
4. **Ret. Income Plan for Emps. of Warren General Hosp.**, *see* Oct. 14, 2016 Form 5500, https://goo.gl/8bWpiR.
5. **Cmty. Hosp. Ret. Plan**, *see* Oct. 14, 2016 Form 5500, https://goo.gl/ms4NbI.

SSM Health Care

1. **Pension Plan of SSM Audrain Health Care, Inc.**, *see* Aug. 24, 2016 Form 5500, https://goo.gl/Zu5znI.
2. **SSM 401(k) Plan**, *see* Sept. 26, 2016 Form 5500, https://goo.gl/WNML1R.
3. **The Ret. Sav. Plan of SMM Audrain Health Care, Inc.**, *see* Jan. 12, 2015 Form 5500, https://goo.gl/81bLrK.
4. **Life & Accidental Death & Dismemberment Plan for Emps. of SSM**, *see* Sept. 12, 2016 Form 5500, https://goo.gl/CjdfbZ.
5. **SSM Emp. Health & Dental Care Plans**, *see* Sept. 12, 2016 Form 5500, https://goo.gl/24k2pL.

6. **Long Term Disability Ins. For Emps. of SSM**, *see* Sept. 12, 2016 Form 5500, https://goo.gl/h8msTv.
7. **SSM Health Care Spending Account Plan**, *see* Sept. 12, 2016 Form 5500, https://goo.gl/Buvkl0.
8. **Short Term Disability Plan**, *see* Sept. 12, 2016 Form 5500, https://goo.gl/4Teg5e.
9. **St. Clare Meadows Care Cent.**, *see* July 23, 2014 Form 5500, https://goo.gl/ImYMns.
10. **SSM Physician 401(k) Plan**, *see* May 15, 2009 Form 5500, https://goo.gl/Vx3nvx.
11. **SSM Emp. Health Care Fund**, *see* July 27, 2011 Form 5500, https://goo.gl/lkFajX.

Wheaton Franciscan Services, Inc.

1. **Wheaton Franciscan Flexible Spending Plan**, *see* July 28, 2016 Form 5500, https://goo.gl/Dy1oaC.
2. **Wheaton Franciscan Vision Benefit Plan**, *see* July 27, 2016 Form 5500, https://goo.gl/qSasc9.
3. **Wheaton Franciscan Legal Plan**, *see* July 27, 2016 Form 5500, https://goo.gl/mOgVVM.
4. **Wheaton Franciscan Med. Plan**, *see* July 27, 2016 Form 5500, https://goo.gl/LGTgtv.
5. **Wheaton Franciscan Short Term Disability Plan**, *see* July 27, 2016 Form 5500, https://goo.gl/UmXAXd.
6. **Wheaton Franciscan Life Ins. Plan**, *see* July 27, 2016 Form 5500, https://goo.gl/mv4SQx.
7. **Wheaton Franciscan Long Term Disability Plan**, *see* July 27, 2016 Form 5500, https://goo.gl/PnoOSL.
8. **Wheaton Franciscan Exec. LTD Plan**, *see* July 27, 2016 Form 5500, https://goo.gl/SmdNf3.
9. **Wheaton Franciscan Dental Plan**, *see* July 27, 2016 Form 5500, https://goo.gl/unRpXl.

10. **Wheaton Franciscan Servs. Inc. Long Term Care Plan**, *see* Oct. 11, 2013 Form 5500, https://goo.gl/nxrLr7.

Bon Secours Health System (BSHS)

1. **Bon Secours St. Francis Health Sys. Emps. 401(k) Plan**, *see* Oct. 11, 2011 Form 5500, https://goo.gl/dVRp8e.
2. **BSHS, Inc. Dental Plan**, *see* June 29, 2016 Form 5500, https://goo.gl/yRGhPD.
3. **BSHS, Inc. Dependent Care Assistance Plan**, *see* Aug. 5, 2010 Form 5500, https://goo.gl/Drtlfx.
4. **BSHS, Inc. Health Reimbursement Account**, *see* July 29, 2016 Form 5500, https://goo.gl/ADkFVy.
5. **BSHS, Inc. Healthcare Flexible Spending Arrangement**, *see* June 29, 2016 Form 5500, https://goo.gl/egpw3h.
6. **BSHS, Inc. Med. Plan**, *see* June 29, 2016 Form 5500, https://goo.gl/190az7.
7. **BSHS, Inc. Vision Plan**, *see* June 29, 2016 Form 5500, https://goo.gl/Y5PZXd.
8. **Franciscan Sisters of the Poor Ret. & Sav. Plan**, *see* Oct. 31, 2011 Form 5500, https://goo.gl/m5WhPF.
9. **Liberty Health Sys., Inc. Pension Plan**, *see* Sept. 27, 2016 Form 5500, https://goo.gl/hLfq4D.
10. **Ret. Plan of BSHS, Inc.**, *see* Oct. 31, 2016 Form 5500, https://goo.gl/Vc07fM.
11. **Bon Secours-St. Francis Xavier Hosp. Emp. Tax Deferred Annuity Plan**, *see* July 14, 2014 Form 5500, https://goo.gl/4lYPrK.
12. **AFLAC Cancer Plan**, *see* July 27, 2016 Form 5500, https://goo.gl/i7joQ2.
13. **Emp. Loss of Time Ins. Plan**, *see* July 18, 2012 Form 5500, https://goo.gl/BpIlr7.

14. **Emp. Assistance Counseling**, *see* July 27, 2016 Form 5500, https://goo.gl/MfZxbL.

15. **Bon Secours Cmty. Hosp. Grp. Life, Dental & Vision**, *see* Oct. 13, 2006 Form 5500, https://goo.gl/sBxc29.

16. **BSHS, Inc. ACE Bus. Travel Accident Policy**, *see* Sept. 30, 2016 Form 5500, https://goo.gl/UWD7B6.

17. **Our Lady of Bellefonte Hosp. Grp. Health Plan**, *see* Nov. 11, 2005 Form 5500, https://goo.gl/i98YPf.

18. **Bon Secours Cmty. Hosp. Grp. Health Plan**, *see* Oct. 13, 2006 Form 5500, https://goo.gl/w2pxVP.

19. **Bon Secours Kentucky Health Sys., Inc. Life Ins. Plan**, *see* Oct. 16, 2006 Form 5500, https://goo.gl/XATvA3.

20. **Bon Secours NJ Grp. Life Ins. Plan**, *see* July 26, 2006 Form 5500, https://goo.gl/YWJu6j.

21. **Bon Secours NJ Grp. Long Term Disability Plan**, *see* July 27, 2006 Form 5500, https://goo.gl/qETjpv.

22. **Bon Secours NJ Grp. Health Plan**, *see* Mar. 13, 2008 Form 5500, https://goo.gl/B0FzXk.

23. **BSNYHS Grp. Health Plan**, *see* Oct. 13, 2005 Form 5500, https://goo.gl/6Vpa29.

24. **St. Francis Pension Plan**, *see* Oct. 10, 2003 Form 5500, https://goo.gl/p8I4b1.

25. **Grp. Dental Plan**, *see* Sept. 28, 2005 Form 5500, https://goo.gl/XpZcLh.

26. **Long-Term Disability Income Plan**, *see* Sept. 28, 2005 Form 5500, https://goo.gl/ZSPEO2.

27. **Bon Secours St. Francis Health Sys. Dependent Care Flexible Spending Account**, *see* June 30, 2005 Form 5500, https://goo.gl/Lc8NDw.

28. **Bon Secours St. Francis Health Sys. Health Care Flexible Spending Account**, *see* June 30, 2005 Form 5500, https://goo.gl/sCBCIw.

29. **Bon Secours St. Mary's Hosp. Section 403(b) Tax Deferred Annuity Plan**, *see* Oct. 17, 2005 Form 5500, https://goo.gl/QOopca.

30. **Tax Sheltered Annuity Plan**, *see* Oct. 17, 2005 Form 5500, https://goo.gl/YH77up.

31. **Bon Secours St. Mary's Hosp.**, *see* Oct. 16, 2006 Form 5500, https://goo.gl/WBcp3j.

32. **St. Francis 401(k) Plan**, *see* Oct. 1, 2003 Form 5500, https://goo.gl/kysOKH.

Franciscan Alliance

1. **Greater Lafayette Health Servs., Inc. Pension Sec. Plan**, *see* Oct. 14, 2016 Form 5500, https://goo.gl/glnsts.

2. **St. Alexis Hosp. Ret. Plan**, *see* Sept. 15, 2014 Form 5500, https://goo.gl/Q5dL7k.

3. **Franciscan Alliance, Inc. Pension Sec. Plan**, *see* Sisters of St. Francis Health Servs. Master Pension Trust Oct. 17, 2012 Form 5500, https://goo.gl/rnJRjv.

4. **St. Anthony Hosp. Bargaining Unit Emps. Ret. Plan**, *see* Sisters of St. Francis Health Servs. Master Pension Trust Oct. 17, 2012 Form 5500, https://goo.gl/7pWlmd.

5. **Franciscan Home Care Servs., Inc. Pension Sec. Plan**, *see* Aug. 10, 2012 Form 5500, https://goo.gl/WXUJof.

6. **Assisi Ret. Plan**, *see* Oct. 17, 2016 Form 5500, https://goo.gl/MQui5w.

7. **Specialty Physicians of Illinois, LLC 401(K) Profit Sharing Plan**, *see* Oct. 17, 2016 Form 5500, https://goo.gl/8QVRx5.

8. **Franciscan Home Care Servs., Inc. Matched Sav. Plan**, *see* Sept. 26, 2016 Form 5500, https://goo.gl/Ox4RhH.

9. **Franciscan Home Care Servs., Inc. 403(B) Plan**, *see* Sept. 26, 2016 Form 5500, https://goo.gl/afZyrD.

10. **Specialty Physicians of Illinois, LLC Welfare Benefit Plan**, *see* May 18, 2016 Form 5500, https://goo.gl/K9GSu1.

11. **Greater Lafayette Health Servs., Inc. Tax-Sheltered Annuity Plan**, *see* 2008 Form 5500, https://goo.gl/XBsh4G.

12. **Greater Lafayette Health Servs., Inc. Matched Sav. Plan**, *see* Mar. 30, 2007 Form 5500, https://goo.gl/67S5C.

13. **Greater Lafayette Health Servs. Ins. Plan**, *see* July 21, 2005 Form 5500, https://goo.gl/eJP4dz.

OSF Healthcare System

1. **OSF Grp. Med. & Dental Plan**, *see* Sept. 2, 2016 Form 5500, https://goo.gl/Mnae1C.

2. **OSF Miscellaneous Welfare Benefits Plan**, *see* Sept. 2, 2016 Form 5500, https://goo.gl/ef4OaM.

Iowa Health Systems (d/b/a Unitypoint Health)

1. **Proctor Health Care Inc. Pension Plan & Trust**, *see* 2015 Form 5500, https://goo.gl/HIX7nG.

Mercy (f/k/a Sisters of Mercy Health)

1. **Sisters of Mercy Long Term Disability Plan**, *see* Sept. 9, 2016 Form 5500, https://goo.gl/e7VpFV.

2. **401(k) Plan for Affiliates of Sisters of Mercy Health Sys.**, *see* June 13, 2013 Form 5500, https://goo.gl/LZcQYX.

3. **Ret. Plan for Affiliates of Sisters of Mercy Health Sys.**, *see* Oct. 14, 2014 Form 5500, https://goo.gl/raAk4y.

Holy Cross Hospital (HCH)

1. **HCH Welfare Benefit Plan**, *see* Oct. 7, 2014 Form 5500, https://goo.gl/OE08ZF.
2. **HCH Dental Assistance Plan**, *see* Oct. 15, 2004 Form 5500, https://goo.gl/ZWjrKH.
3. **Blue Cross Blue Shield Retiree Health Plan**, *see* July 21, 2004 Form 5500, https://goo.gl/Nji5Cu.

APPENDIX D

ERISA-Compliant Defined Benefit Plans Operated by Non-Profit Hospitals with Current or Historic Religious Affiliation

Plan Name, Plan Sponsor, URL for claimed current or historic religious affiliation, Total Participants[3]

1. UPMC Basic Ret. Plan, UPMC, https://goo.gl/xVkzUh, 65,199 participants
2. Intermountain Healthcare Pension Plan, Intermountain Health Care, Inc., https://goo.gl/AGRrii, 44,821 participants
3. Northwell Health Cash Balance Plan, N. Shore Univ. Hosp., https://goo.gl/UM21Hj, 38,324 participants
4. BJC Pension Plan, BJC Health Sys., https://goo.gl/2PBthB, 35,384 participants
5. Aurora Health Care, Inc. Pension Plan, Aurora Health Care, Inc., https://goo.gl/Gikv7u, 35,192 participants
6. Barnabas Health Ret. Income Plan, Barnabas Health, Inc., https://goo.gl/auAL7Z, 22,062 participants

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[3] Source for Plan Name, Plan Sponsor, Total Participants: U.S. Dep't of Labor Emp. Benefits Security Admin., 2015 Form 5500 Dataset *available at* http://askebsa.dol.gov/FOIA%20Files/2015/Latest/F_5500_2015_Latest.zip. The data was collected by isolating plans that had code 622000 in column AT (*i.e.*, hospitals) and code 1 in column CC (*i.e*, defined benefit plans) of the DOL 2015 Form 5500 Dataset. The results were compared to American Hospital Association Annual Survey Database, FY2015, to identify plans whose sponsor is nonprofit. The source for claimed current or historic religious affiliation is the URL listed for each plan.

7. The New York & Presbyterian Hosp. Ret. Plan, The New York Presbyterian Hosp., https://goo.gl/Sz1C1l, 19,551 participants
8. Children's Hosp. Med. Ctr. Ret. Plan, Children's Hosp. Med. Ctr., https://goo.gl/lfi4jY, 18,818 participants
9. The OhioHealth Cash Balance Ret. Plan, OhioHealth Corp., https://goo.gl/c0cMZt, 17,402 participants
10. Lifespan Corp. Ret. Plan, Lifespan Corp., https://goo.gl/Zjjv1b, 15,983 participants
11. Revised Legacy Health Emps. Ret. Plan, Legacy Health, https://goo.gl/knizGf, 13,369 participants
12. Medstar Health, Inc. Pension Equity Plan, Medstar Health, Inc., https://goo.gl/aiwTMn, https://goo.gl/9V0mnV, 11,631 participants
13. Beth Israel Deaconess Med. Ctr. Pension Plan, Beth Israel Deaconess Med. Ctr., https://goo.gl/wTpQYh, 11,333 participants
14. Wellspan Health Sys. Pension Plan, Wellspan Health, https://goo.gl/UQPl6P, 9,959 participants
15. Nw. Mem'l Hosp. Emps.' Pension Plan, Nw. Mem'l Hosp., https://goo.gl/hmRoJQ, 9,106 participants
16. Summa Health Ret. Income Plan & Trust, Summa Health, goo.gl/uKhSOU, 8,908 participants
17. Norton Healthcare, Inc. Ret. Plan, Norton Healthcare, Inc., https://goo.gl/2aq4ej, 8,545 participants
18. Emory Healthcare, Inc. Ret. Plan, Emory Healthcare, Inc., https://goo.gl/O54DCp, 8,505 participants
19. Pension Plan of N.C. Baptist Hosp., N.C. Baptist Hosp., https://goo.gl/FAa0To, 8,473 participants
20. Medstar Health, Inc. Cash Balance Ret. Plan, Medstar Health, Inc., https://goo.gl/aiwTMn, https://goo.gl/9V0mnV, 8,271 participants

21. Unity Health Sys. Ret. Plan, Unity Health Sys., https://goo.gl/0ol3v1, 8,085 participants

22. Verity Health Sys. Ret. Plan, Verity Health Sys., https://goo.gl/Sa7TCU, https://goo.gl/wQy42c, 7,999 participants

23. Rush Univ. Med. Ctr. Ret. Plan for Pre-2015 Separations, Rush Univ. Med. Ctr., https://goo.gl/PKQxin, 7,401 participants

24. Rush Univ. Med. Ctr. Ret. Plan, Rush Univ. Med. Ctr., https://goo.gl/PKQxin, 7,327 participants

25. St. Luke's Health Network Pension Plan, St. Luke's Univ. Health Network, https://goo.gl/I4BDJB, 7,090 participants

26. Saint Luke's Health Sys., Inc. Ret. Plan, Saint Luke's Health Sys., https://goo.gl/PPCiPH, 7,042 participants

27. Bethesda Ret. Plan, Bethesda, Inc., https://goo.gl/EeAs8N, 7,033 participants

28. St. Luke's Health Sys. Ret. Plan, CHI St. Luke's Health, https://goo.gl/LGAVK6, 6,432 participants

29. SCL Health Consol. Ret. Plan, Sisters of Charity of Leavenworth Health Sys., https://goo.gl/RRVerP, 6,403 participants

30. Presbyterian Healthcare Servs. Emps.' Pension Plan, Presbyterian Healthcare Services, https://goo.gl/XELV9k, 6,170 participants

31. The Christ Hosp. Pension Plan, The Christ Hosp., https://goo.gl/soA8gd, 6,010 participants

32. Pension Restoration Plan of Novant Health, Inc., Novant Health, Inc., https://goo.gl/E5PHVW, 5,935 participants

33. The Neb. Methodist Health Sys. Ret. Account Plan, Neb. Methodist Health Sys., Inc., https://goo.gl/8qwMZH, 5,771 participants

34. Thomas Jefferson Univ. Hosps., Inc. Emps.' Pension Plan, Thomas Jefferson Univ., https://goo.gl/RvDaqs, 5,492 participants

35. Deaconess Health Sys., Inc. Ret. Plan, Deaconess Health Sys., Inc., https://goo.gl/LMiTgD, 5,438 participants

36. Mem'l Health Sys. Emp. Pension Plan, Mem'l Health Sys., https://goo.gl/IrAzir, 5,214 participants

37. Pension Plan of Centra Health, Inc., Centra Health, Inc., https://goo.gl/PTC80X, 4,891 participants

38. Ne. Health Emp'r Ret. Plan, Trinity Health Corp., https://goo.gl/uofZ9w, 4,817 participants

39. Reg'l Health, Inc. Pension Plan, Reg'l Health, Inc., https://goo.gl/JydLtB, 4,744 participants

40. Cedars-Sinai Health Sys. Defined Benefit Ret. Plan, Cedars-Sinai Med. Ctr., https://goo.gl/4c2iib, 4,733 participants

41. Peacehealth SWHS Frozen DB Pension Plan, Peacehealth, https://goo.gl/gEDaCR, 4,695 participants

42. St Joseph's Hosp. Health Ctr. Pension Plan, St. Josephs Hosp. Health Ctr., https://goo.gl/ZmpnHE, 4,561 participants

43. Ret. Plan for Emps. of Multicare Health Sys., Multicare Health Sys., https://goo.gl/tyvLuO, 4,446 participants

44. Thomas Jefferson Univ. Emps. Pension Plan, Thomas Jefferson Univ., https://goo.gl/RvDaqs, 4,131 participants

45. Meriter Health Services Emp. Ret. Plan, Meriter Health Services, Inc., https://goo.gl/z1VOm7, https://goo.gl/fZrWJQ, 4,119 participants

46. Interhealth Corp. Ret. Plan, PIH Health, https://goo.gl/pjOuc4, 4,012 participants

47. Altru Health Sys. Cash Balance Plan, Altru Health Sys., https://goo.gl/M0EPNn, 3,896 participants

48. Ret. Plan for Emps. of Jefferson Reg'l Med. Ctr., Jefferson Reg'l Med. Ctr., https://goo.gl/dTcy2j, https://goo.gl/QOV6Hm, 3,861 participants

49. Children's Med. Ctr. of Dallas Emp. Ret. Plan, Children's Med. Ctr. of Dallas, https://goo.gl/Ifi4jY, 3,677 participants

50. Mercy Health Sys. Emps.' Ret. Plan, Mercy Health Sys. Corp., https://goo.gl/4Nc4XZ, 3,664 participants

51. N.Y. Methodist Hosp. Emps.' Ret. Plan, N.Y. Methodist Hosp., https://goo.gl/OwM3BI, 3,620 participants

52. Baptist Health Care Corp. Pension Plan, Baptist Health Care Corp., https://goo.gl/BuBHso, 3,606 participants

53. Ind. Univ. Health Ball Mem'l Hosp., Inc. Emps.' Pension Plan, Indiana Univ. Health Ball Mem'l Hosp., Inc., https://goo.gl/uXofvH, 3,571 participants

54. St. Lukes-Roosevelt Hosp. Ctr. Emps.' Pension Plan, St. Lukes-Roosevelt Hosp. Ctr., https://goo.gl/wx5g1O, 3,561 participants

55. Genesis Health Sys. Pension Plan, Genesis Health Sys., https://goo.gl/nXZn4Z, 3,553 participants

56. N.Y. Hosp. Med. Ctr. of Queens Health Serv. Ret. Plan, N.Y. Hosp. Med. Ctr. of Queens, https://goo.gl/hm1fnp, 3,432 participants

57. Owensboro Health Ret. Plan, Owensboro Health, Inc., https://goo.gl/OBpnYp, 3,215 participants

58. Methodist Med. Ctr. of Ill. Ret. Pl., Methodist Med. Ctr. of Illinois, https://goo.gl/PIInxY, 3,142 participants

59. Genesis Healthcare Sys. Emps.' Ret. Plan, Genesis Healthcare Sys., https://goo.gl/pmbJvS, 3,142 participants

60. The Banner Health Sys. Ret. Income Plan, Banner Health, https://goo.gl/MGJ02E, 2,895 participants

61. NYU Lutheran Med. Ctr. Defined Benefit Ret. Plan, NYU Lutheran Med. Ctr., https://goo.gl/V3Qnv2, 2,882 participants

62. Sun Health Corp. Pension Plan, Banner Health, https://goo.gl/MGJ02E, 2,847 participants

63. OSF Saint Francis, Inc. Emps. Pension Plan, OSF Saint Francis, Inc., https://goo.gl/C1MaHM, 2,837 participants

64. The Methodist Hosps., Inc. Ret. Plan, The Methodist Hosps., Inc., https://goo.gl/cI8XUD, 2,822 participants

65. TriHealth, Inc. Ret. Plan, TriHealth, Inc., https://goo.gl/8iX30U, 2,801 participants

66. Orange Reg'l Med. Ctr. Emps.' Ret. Plan, Orange Reg'l Med. Ctr., https://goo.gl/fmXO2S, 2,480 participants

67. The Univ. of Vt. Med. Ctr. Pension Plan, The Univ. of Vt. Med. Ctr., https://goo.gl/Zaf4Z, 2,459 participants

68. The Pension Plan of The Good Samaritan Hosp., Good Samaritan Hosp., https://goo.gl/UwCM0Q, 2,383 participants

69. Ret. Plan for Emps. of Blessing Hosp., Blessing Corporate Services, https://goo.gl//dsegR, 2,370 participants

70. The St. Luke Hosps., Inc. Pension Plan, St. Elizabeth Med. Ctr., Inc., https://goo.gl/EB9mfP, 2,266 participants

71. CVPH Med. Ctr. Emp. Defined Benefit Pension Plan, Champlain Valley Physicians Hosp., https://goo.gl/wVJqNw, 2,265 participants

72. Emps. Ret. Plan of Lawrence Hosp., Lawrence Hosp. Ctr., https://goo.gl/i0uF28, https://goo.gl/hm1fnp, 2,192 participants

73. Touro Infirmary Ret. Plan, Touro Infirmary, https://goo.gl/3ETZto, 2,166 participants

74. HealthEast Care Sys. Pension Plan, HealthEast Care Sys., https://goo.gl/klf5JV, 2,094 participants

75. Good Samaritan Hosp. Pension Plan, Good Samaritan Hosp., https://goo.gl/mp08vs, 2,084 participants

76. Stamford Health Sys. Ret. Income Plan, Stamford Health, Inc., https://goo.gl/40U1u6, 2,051 participants

77. St. Luke's Hosp. Ret. Plan, St. Luke's Hosp., https://goo.gl/VAqu88, 2,037 participants

78. Pension Plan for Emps. of St. Luke's Hosp. of Duluth, St. Luke's Hosp. of Duluth, https://goo.gl/ZW5kYy, 1,993 participants

79. St. Luke's Methodist Hosp. Ret. Plan, St. Luke's Methodist Hosp., https://goo.gl/7B4Xw3, 1,989 participants

80. Gottlieb Mem'l Hosp. Emps. Pension Plan, Gottlieb Mem'l Hosp., https://goo.gl/yaor6g, https://goo.gl/MjLF7R, https://goo.gl/nOIxCW, 1,949 participants

81. Bloomington Hosp. Revised Emps.' Pension Plan, Ind. Univ. Health Bloomington Hosp., https://goo.gl/uXofvH, 1,839 participants

82. Greater Lafayette Health Servs., Inc. Pension Security Plan, Franciscan Alliance, Inc., https://goo.gl/hXkIKb, 1,821 participants

83. Ret. Income Plan for Grandview Hosp. & Med. Ctr., Grandview Hosp. & Med. Ctr., https://goo.gl/vPDqDQ, 1,783 participants

84. Ret. Plan for Emps. of Herbert J. Thomas Mem'l Hosp., Herbert J. Thomas Mem'l Hosp., goo.gl/8XKeAw, 1,782 participants

85. Georgetown Hosp. Sys. Pension Plan, Georgetown Hosp. Sys., goo.gl/BZcujf, 1,719 participants

86. Maimonides Med. Ctr. Pension Plan, Maimonides Med. Ctr., https://goo.gl/0TtsYD, 1,710 participants

87. Cortland Reg'l Med. Ctr. Pension Plan, Cortland Reg'l Med. Ctr., https://goo.gl/DDlN6f, 1,699 participants

88. The Brookdale Univ. Hosp. & Med. Ctr. Emps.' Ret. Plan, The Brookdale Univ. Hosp. & Med. Ctr., https://goo.gl/qWWbP4, 1,681 participants

89. Condell Health Network Ret. Plan, Advocate Health Care Network, https://goo.gl/f6Ouq4, 1,586 participants

90. The Jewish Home & Hosp. Ret. Plan, The New Jewish Home, https://goo.gl/zHeoLt, 1,558 participants

91. Emps. Ret. Plan of St. Barnabas Hosp. & Affiliates, St. Barnabas Hosp. & Braker Mem'l, https://goo.gl/auAL7Z, 1,542 participants

92. Mayo Clinic Saint Marys Hosp. Ret. Plan, Mayo Clinic Saint Marys Hosp., https://goo.gl/gjJjQj, 1,500 participants

93. Consol. Health Servs., Inc. Ret. Plan, Catholic Health Initiatives, https://goo.gl/CJ1liO, 1,490 participants

94. Jennie Edmundson Mem'l Hosp. Emp. Ret. Plan, Jennie Edmundson Mem'l Hosp., goo.gl/oNICIt, 1,471 participants

95. WCA Hosp. Ret. Plan, WCA Hosp., https://goo.gl/qbr2W, 1,453 participants

96. Scotland Health Care Sys. Emps. Pension Plan, Scotland Health Care Sys., https://goo.gl/ZG9daN, 1,438 participants

97. Pension Plan of Wayne Mem'l Hosp., Inc., Wayne Mem'l Hosp., Inc., https://goo.gl/FRtUaJ, 1,434 participants

98. Crittenton Hosp. Non-Contributory Pension Plan, Crittenton Hosp. Med. Ctr., https://goo.gl/t3Cvfx, 1,434 participants

99. Proctor Health Care Inc. Pension Plan &, Proctor Health Care Inc., https://goo.gl/gy0QHs, 1,432 participants

100. St. John's Riverside Hosp. Ret. Assistance Plan, St. Johns Riverside Hosp., https://goo.gl/WFbffM, 1,429 participants

101. King's Daughters Med. Ctr. Ret. Plan, King's Daughters Health Sys., https://goo.gl/rAKJoU, https://goo.gl/kOkPe3, 1,418 participants

102. Pension Plan of Circle Health, Inc., Circle Health, Inc., https://goo.gl/M8AYUD, 1,365 participants

103. Ret. Plan for Emps. of Harrison Mem'l Hosp., Harrison Med. Ctr., https://goo.gl/PiMkSx, 1,355 participants

104. Good Shepherd Rehab. Hosp. Emps. Pension Plan, Good Shepherd Rehab. Hosp., https://goo.gl/wZG1lk, 1,342 participants

105. Ret. Plan for Emps. of Jameson Health Sys. Inc., Jameson Health Sys. Inc., https://goo.gl/jksK0p, https://goo.gl/MgxDvT, 1,338 participants

106. Sibley Mem'l Hosp. Ret. Plan, Lucy-Webb Hayes Nat'l Training School for Deaconesses, goo.gl/Abyz3O, 1,329 participants

107. Indiana Univ. Health Defined Benefit Plan, Indiana Univ. Health, Inc., https://goo.gl/uXofvH, 1,297 participants

108. FHN Pension Plan, Freeport Health Network, https://goo.gl/2eeG5P, 1,246 participants

109. Good Samaritan Hosp. Ret. Plan, Good Samaritan Hosp. Corvallis, https://goo.gl/Vzgv1F, 1,225 participants

110. St. Luke's Cornwall Hosp. Ret. Plan, St. Luke's Cornwall Hosp., https://goo.gl/emiM9h, 1,214 participants

111. St. Luke's Health Sys. Basic Pension Plan, St. Luke's Health Sys., Ltd., https://goo.gl/FJPn0H, 1,205 participants

112. Firelands Reg'l Med. Ctr. Ret. Plan, Firelands Reg'l Med. Ctr., https://goo.gl/p63kih, 1,162 participants

113. Progressive Health Sys., Inc. Emps. Pension Plan, Progressive Health Sys., Inc. C/O Pekin Mem'l Hosp., https://goo.gl/enR0c4, 1,124 participants

114. Day Kimball Hosp. Ret. Income Plan, Day Kimball Healthcare, https://goo.gl/DS0qz9, 1,111 participants

115. Laurel Health Sys. Pension Plan, Susquehanna Health Sys., https://goo.gl/dobXmJ, 1,086 participants

116. Allen Health Sys., Inc. Frozen Ret. Income, Allen Health Sys., Inc., https://goo.gl/xdqYQX, https://goo.gl/z1VOm7, 1,062 participants

117. Pension Program for Emps. of Olean Gen. Hosp., Olean Gen. Hosp., https://goo.gl/esWDIS, 1,025 participants

118. The Schuylkill Med. Ctr. Emps.' Pension Plan, Schuylkill Med. Ctr. - South Jackson, https://goo.gl/vYb4Z6, 1,011 participants

119. Cmty. Hosp. Ret. Plan, Mercy Health, https://goo.gl/tQFTI2, 969 participants

120. St. Joseph Hosp. Ret. Income Plan, Catholic Health, https://goo.gl/vK3BIX, 962 participants

121. Ret. Plan for Emps. of Claxton Hepburn Med. Ctr., Claxton Hepburn Med. Ctr., https://goo.gl/U7RccL, 926 participants

122. Se. Ohio Reg'l Med. Ctr. Pension Plan, Se. Ohio Reg'l Med. Ctr., https://goo.gl/ngqLDX, https://goo.gl/AVbFzf, 924 participants

123. Milton Hosp. Pension Plan, Beth Israel Deaconess Hosp.-Milton, https://goo.gl/wTpQYh, 924 participants

124. E. Niagara Hosp., Inc. Pension Plan, E. Niagara Hosp., Inc., https://goo.gl/BCMU4a, https://goo.gl/aL3qCE, 912 participants

125. St. Rose Hosp. Cash Balance Pension Plan, St. Rose Hosp., https://goo.gl/cQkupn, 910 participants

126. Ret. Plan for Emps. of Ohio Valley Gen. Hosp., Ohio Valley Hosp., https://goo.gl/INlqU2, 893 participants

127. St. Peter's Hosp. Cashplus Ret. Plan, St. Peter's Hosp., https://goo.gl/fUXg6r, 871 participants

128. Ret. Plan for Emps. of Mem'l Health Sys. of E. Tex., Mem'l Health Sys. of E. Tex., https://goo.gl/XXs732, 829 participants

129. Pension Plan for Emps. of United Mem'l Med. Ctr., United Mem'l Med. Ctr., https://goo.gl/DQKM6l, 819 participants

130. Deaconess Hosp. Ret. Plan, Deaconess Hosp., https://goo.gl/lXztza, 815 participants

131. Liberty Health Sys., Inc. Pension Plan, Bon Secours Health Sys., Inc., https://goo.gl/P3MHAb, 809 participants

132. Defined Benefit Pension Plan of Courage Ctr., Allina Health Sys., https://goo.gl/lEzVz9, 765 participants

133. Ret. Plan for Emps. of N. Mont. Hosp., N. Mont. Hosp., https://goo.gl/5FiL3f, 752 participants

134. Ret. Plan for Emps. of Hannibal Reg'l Hosp., Hannibal Reg'l Hosp., https://goo.gl/CGQEUr, https://goo.gl/BV248t, 734 participants

135. Oneida Healthcare Ctr. Pension Plan, Oneida Healthcare, https://goo.gl/aljQ4a, 727 participants

136. Ret. Income Plan for Emps. of Warren Gen. Hosp., Mercy Health, https://goo.gl/tQFTI2, 699 participants

137. Ret. Plan for Registered Practical Nurses of Samaritan Med. Centers & Samaritan Keep Nursing Home, Inc., Samaritan Med. Ctr., https://goo.gl/1uqsNG, 683 participants

138. Ret. Plan for Bargaining Unit Emps. of Warren Gen. Hosp., Warren Gen. Hosp., https://goo.gl/uwb6qz, 681 participants

139. Pension Plan for Emps. of Baptist Health Richmond, Inc., Baptist Health Richmond, Inc., https://goo.gl/V2jfk8, 670 participants

140. Hazleton Saint Joseph Med. Ctr. Ret. Income Plan, Ne. Pennsylvania Health Corp., https://goo.gl/PSDfZo, 648 participants

141. Montefiore Med. Ctr. Health Services Ret. Plan, Montefiore Med. Ctr., https://goo.gl/ylov0n, 646 participants

142. Magic Valley Reg'l Med. Ctr. Pension Plan, St. Luke's Health Sys., Ltd., https://goo.gl/QnP4jZ, 638 participants

143. Mayo Clinic Methodist Hosp. Hourly Emps.' Pension Plan, Mayo Clinic Methodist Hosp., https://goo.gl/ia9dcs, 632 participants

144. Mary Free Bed Rehab. Hosp. Pension Plan, Mary Free Bed Hosp. & Rehab. Ctr., https://goo.gl/YgUjUD, https://goo.gl/Ou95wI, 606 participants

145. Richmond Univ. Med. Ctr. Pension Plan for Emps. Represented By Nysna, Richmond Univ. Med. Ctr., https://goo.gl/LhNrMl, 581 participants

146. Middle Tennessee Med. Ctr., Inc. Ret. Plan, Middle Tennessee Med. Ctr., Inc., https://goo.gl/Dya6hl, 577 participants

147. St. Joseph's Hosp., Inc. Ret. Plan & Trust, St. Joseph's Hosp. of Buckhannon, Inc., https://goo.gl/GksLzp, 566 participants

148. Pension Plan of SSM Audrain Health Care, Inc., SSM Health Care Corp., https://goo.gl/a2brmW, 560 participants

149. Ret. Plan for The Emps. of Blythedale Children's Hosp., Blythedale Children's Hosp., https://goo.gl/b5bcgb, https://goo.gl/uadvss, 538 participants

150. Brookdale Univ. Hosp. & Med. Ctr. Cash Balance Plan, The Brookdale Univ. Hosp. & Med. Ctr., https://goo.gl/qWWbP4, 531 participants

151. Allen Health Sys., Inc. Ret. Income Plan, Allen Health Sys., Inc., https://goo.gl/xdqYQX, https://goo.gl/z1VOm7, 495 participants

152. Ill. Valley Cmty. Hosp. Emps. Ret. Plan, Ill. Valley Cmty. Hosp., https://goo.gl/5v5RQ1, 491 participants

153. Ret. Plan for Emps. of Androscoggin Valley Hosp., Inc., Androscoggin Valley Hosp., Inc., https://goo.gl/6Z5hxq, 467 participants

154. Restated Ret. Plan for The Emps. of Miller-Dwan Med. Ctr., SMDC Med. Ctr., https://goo.gl/Ey7OcD, 450 participants

155. Nurses Defined Benefit Ret. Plan of NYP/Lower Manhattan Hosp., The New York Presbyterian Hosp., https://goo.gl/Sz1C1l, 448 participants

156. Kingsbrook Jewish Med. Ctr. Health Services Ret. Plan, Kingsbrook Jewish Med. Ctr., https://goo.gl/uH3GvF, 433 participants

157. Columbia Mem'l Hosp. Ret. Plan, Columbia Mem'l Hosp., https://goo.gl/5kjznx, 412 participants

158. Ret. Plan for Licensed Practical Nurses of Samaritan Med. Ctr. & Samaritan - Keep Nursing Home, Inc., Samaritan Med. Ctr., https://goo.gl/1uqsNG, 369 participants

159. Hardin Mem'l Hosp. Ret. Plan, Hardin Mem'l Hosp., https://goo.gl/1ZgqPG, 335 participants

160. Montgomery Gen. Hosp. Emps.' Pension Plan, Montgomery Gen. Hosp., https://goo.gl/9QpNlz, 302 participants

161. Allina Health Pension Plan for Collectively Bargained Emps., Allina Health Sys., https://goo.gl/lEzVz9, 277 participants

162. Ret. Plan for Salaried Emps. of Warren Gen. Hosp., Warren Gen. Hosp., https://goo.gl/uwb6qz, 224 participants

163. Brighton Hosp. Ret. Plan, Brighton Hosp., https://goo.gl/akdaEG, 210 participants

164. Tyler Mem'l Hosp. Pension Plan, Mercy Health, https://goo.gl/tQFT12. 174 participants

165. The Pension Plan for Members of The Mount Sinai Hosp. Pharmacy Ass'n, The Mount Sinai Hosp., https://goo.gl/SvNfgG, 135 participants

166. The New York Cmty. Hosp. of Brooklyn, Inc. Emps.' Pension Plan, The New York Cmty. Hosp. of Brooklyn, https://goo.gl/VQ17gB, 126 participants

167. Beth Abraham Health Services, Inc. Health Services Health Services Ret. Plan, Beth Abraham Health Services, Inc., https://goo.gl/dJF2EO, 95 participants

168. Bethesda Hosp. Inc. Suppl. Executive Ret. Plan, Bethesda, Inc., https://goo.gl/EeAs8N, 6 participants

ERISA-Compliant Defined Benefit Plans Operated by Non-Profit Hospitals

Plan Name, Plan Sponsor, Total participants[4]

1. Sutter Health Ret. Plan, Sutter Health, 50,756 participants
2. The CCHS Ret. Plan, The Cleveland Clinic Found., 37,627 participants
3. Sentara Pension Plan, Sentara Healthcare, 31,689 participants
4. Univ. Hosp. Health Sys., Inc. Ret. Plan, Univ. Hosp. Health Sys., 28,615 participants
5. Twin City Hosps. - Minn. Nurses Ass'n Pension Plan, Pension Committee Under Twin City Hosps. - Minn. Nurses, 24,901 participants
6. William Beaumont Hosp. Emps.' Ret. Plan, William Beaumont Hosp., 21,537 participants
7. Emps.' Cash Balance Plan of Atlantic Health Sys., Inc., Atlantic Health Sys., 19,790 participants
8. Henry Ford Health Sys. Pension Plan, Henry Ford Health Sys., 19,743 participants
9. Premier Health Partners Emps.' Ret. Plan, Premier Health, 18,618 participants
10. Ret. Plan for Eligible Non-Represented Emps. of W. Penn Allegheny Health Sys., W. Penn Allegheny Health Sys., 18,110 participants
11. Inova Health Sys. Ret. Income Plan, Inova Health Sys. Found., 17,604 participants

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[4] *See supra* note 3, except that no claimed current or historic religious affiliations are listed for these plans.

12. Main Line Health Ret. Income Plan, Main Line Health, Inc., 16,222 participants
13. Mem'l Sloan-Kettering Cancer Ctr. Pension Plan, Mem'l Sloan-Kettering Cancer Ctr., 13,031 participants
14. Rochester Gen. Health Sys. Emp. Ret. Plan, Rochester Gen. Health Sys., 12,860 participants
15. ProMedica Health Sys., Inc. Cash Balance Ret. Plan, ProMedica Health Sys., Inc., 12,702 participants
16. Sharpsaver Ret. Plan, Sharp Healthcare, 12,033 participants
17. Northside Hosp., Inc. Pension Plan, Northside Hosp., Inc., 11,949 participants
18. Kaleida Health Pension Growth Plan, Kaleida Health Corporate Benefits, 11,946 participants
19. The UMass Mem'l Health Care Pension Plan, UMass Mem'l Health Care, Inc., 11,773 participants
20. The Children's Hosp. of Phila. Pension Account Plan, The Children's Hosp. of Phila., 11,311 participants
21. Northshore Univ. HealthSystem Pension Plan, Northshore Univ. HealthSystem, 11,163 participants
22. The Albany Med. Ctr. Ret. Plan, Albany Med. Ctr., 10,147 participants
23. Childr[illegible]'s Hosp. Corp. Pension Plan, The Children's Hosp. Corp., 9,786 participants
24. Baystate Health, Inc. Ret. Program, Baystate Health, Inc., 9,465 participants
25. Hackensack Univ. Med. Ctr. Ret. Income Plan, Hackensack Meridian Health, 9,445 participants
26. Cmty. Hosps. of Ind. Ret. Plan, Cmty. Health Network, Inc., 9,336 participants
27. Oakwood Healthcare, Inc. Cash Balance Plan, Oakwood Healthcare, Inc., 8,977 participants

28. Me. Med. Ctr. Pension Plan, Me. Med. Ctr., 8,696 participants
29. Ret. Plan for Emps. of Hartford Hosp., Hartford Hosp., 8,654 participants
30. Swed. Health Servs. Pension Plan, Swed. Health Servs., 8,611 participants
31. Lancaster Gen. Health Defined Benefit Plan, Lancaster Gen. Health, 8,603 participants
32. Meridian Hosps. Corp. Cash Balance Plan, Meridian Hosps. Corp., 8,239 participants
33. Riverside Health Sys. Ret. Income Plan, Riverside Mgmt. Servs., Inc., 8,190 participants
34. UC Health Ret. Plan, UC Health, LLC, 7,900 participants
35. Spectrum Health Pension Plan, Spectrum Health Sys., 7,685 participants
36. Haw. Pacific Health Ret. Plan, Haw. Pacific Health, 7,665 participants
37. The Queen's Health Sys. Pension Plan, The Queen's Health Sys., 7,539 participants
38. Christiana Care Health Servs., Inc. Ret. Plan, Christiana Care Health Servs., Inc., 7,491 participants
39. The Neb. Medicine Ret. Plan Base & Match, The Neb. Med. Ctr. D/B/A Neb. Medicine, 7,386 participants
40. Pension Plan of Abington Mem'l Hosp., Abington Mem'l Hosp., 7,129 participants
41. Jewish Hosp. & St. Mary's Healthcare Pension Plan, KentuckyOne Health, 7,027 participants
42. The Fla. Health Scis. Ctr., Inc. Ret. Plan, Fla. Health Scis. Ctr., Inc., 6,930 participants
43. Lester E. Cox Med. Ctr. Pension Plan, Lester E. Cox Med. Ctr., 6,927 participants

44. Bronson Healthcare Group, Inc. Ret. Plan, Bronson Healthcare Group, Inc., 6,665 participants

45. Sparrow Health Sys. Ass'nPension Plan, Sparrow Health Sys., 6,581 participants

46. E. Me. Healthcare Sys. Ret. P'ship Plan, E. Me. Healthcare Sys., 6,525 participants

47. Ochsner Clinic Found. Ret. Plan, Ochsner Clinic Found., 6,347 participants

48. Ret. Plan for Emps. of Winthrop-Univ. Hosp., Winthrop-Univ. Hosp., 6,269 participants

49. John Muir Health Ret. Plan, John Muir Health, 6,257 participants

50. Parkview Health Sys., Inc. Emps.' Pension Plan, Parkview Health Sys., Inc., 5,781 participants

51. Valley Health Emps.' Ret. Plan, Valley Health, 5,779 participants

52. The Ret. Plan of Cent. Ga. Health Sys., Inc., Navicent Health, 5,755 participants

53. Virtua Pension Equity Plan, Virtua Health, 5,618 participants

54. Pension Plan for Emps. of Dartmouth-Hitchcock, Mary Hitchcock Mem'l Hosp., 5,594 participants

55. Shriners Hosps. for Children Emps.' Ret. Plan, Shriners Hosps. for Children, 5,588 participants

56. MidMichigan Health Emps.' Pension Plan, MidMichigan Health, 5,577 participants

57. Kennedy Health Sys. Cash Balance Pension Plan, Kennedy Mem'l Hosp. Univ. Med. Ctr., 5,460 participants

58. Care New Eng. Pension Plan, Care New Eng., 5,457 participants

59. Cmty. Hosps. of Cent. Cal. Pension Plan, Cmty. Hosps. of Cent. Cal., 5,415 participants

60. WakeMed Pension Plan, WakeMed Health & Hosps., 5,397 participants

61. Emps.' Ret. Plan of United Health Servs., United Health Servs. Hosps., Inc., 5,265 participants

62. Ann & Robert H. Lurie Children's Hosp. of Chicago Value Growth Plan, Children's Hosp. of Chicago Med. Ctr., 5,223 participants

63. Defined Benefit Pension Plan for the Emps. of Excela Health, Excela Health, 5,210 participants

64. Piedmont Healthcare, Inc. Ret. Plan, Piedmont Healthcare, Inc., 5,203 participants

65. The Nemours Found. Pension Plan, The Nemours Found., 4,944 participants

66. Ret. Plan of Crouse Hosp., Crouse Hosp., 4,875 participants

67. Valley Med. Facilities Ret. Income Plan, Valley Med. Facilities, Inc., 4,738 participants

68. JFK Health Sys. Cash Balance Ret. Plan, JFK Health Sys., 4,643 participants

69. Thedacare Pension Plan, Thedacare Inc., 4,614 participants

70. McLaren Emps.' Pension Plan, McLaren Health Care Corp., 4,505 participants

71. Truman Med. Ctrs. Cash Balance Ret. Plan, Truman Med. Ctrs., 4,458 participants

72. Gwinnett Hosp. Sys., Inc. Ret. Plan, Gwinnett Health Sys., Inc., 4,366 participants

73. Grossmont Hosp. Ret. Plan, Sharp Healthcare, 4,328 participants

74. Ret. Plan for Emps. of Concord Hosp., Capital Region Health Care Corp., 4,294 participants

75. Northshore Univ. HealthSystem Pension Plan B, Northshore Univ. HealthSystem, 4,289 participants

76. Pension Plan of Tallahassee Mem'l Healthcare, Inc., Tallahassee Mem'l Healthcare, Inc., 4,276 participants

77. Aria Health Pension Plan, Aria Health, 4,189 participants

78. Univ. Hosp. Ret. Income Plan, Univ. Health Services, Inc., 4,185 participants

79. Stanford Health Care Staff Pension Plan, Stanford Health Care, 4,182 participants

80. ProHealth Care, Inc. Pension Plan, ProHealth Care, Inc., 4,007 participants

81. Cottage Health Sys. Cash Balance Ret. Plan, Santa Barbara Cottage Hosp., 3,965 participants

82. NYU Hospa. Ctr. Ret. Plan, NYU Hospa. Ctr., 3,961 participants

83. Bryan Health Emps.' Ret. Plan, Bryan Health, 3,863 participants

84. Children's Hosp. & Health Sys., Inc. Pension Plan, Children's Hosp. & Health Sys., Inc., 3,781 participants

85. Ret. Plan for Children's Hosp. & Research Ctr. at Oakland, Children's Hosp. & Research Ctr. at Oakland, 3,770 participants

86. Peninsula Reg'l Med. Ctr. PensionPlus Plan, Peninsula Reg'l Med. Ctr., 3,744 participants

87. Emps.' Ret. Plan of MedCentral Health Sys., MedCentral Health Sys., 3,710 participants

88. Elmhurst Mem'l Hosp. Ret. Plan, Elmhurst Mem'l Hosp., 3,703 participants

89. Huntington Mem'l Hosp. Ret. Plan, Pasadena Hosp. Assoc., Ltd, 3,682 participants

90. Princeton Healthcare Sys. Pension Plan, Princeton Healthcare Sys., 3,672 participants

91. Torrance Health Assoc. Emps.' Ret. Plan, Torrance Health Assoc., 3,670 participants

92. Wyo. Valley Health Care Sys., Inc. Pension Pl, Wyo. Valley Health Care Sys., Inc., 3,670 participants

93. DeKalb Reg'l Health Sys., Inc. Ret. Plan, DeKalb Reg'l Health Sys., Inc., 3,669 participants

94. Ne. Hosp. Corp. Defined Benefit Pension Plan, Ne. Hosp. Corp., 3,571 participants

95. The Atlanticare Health Sys., Inc. Pension Plan, Atlanticare Health Sys., Inc., 3,548 participants

96. Dimensions Health Corp. Pension Plan, Dimensions Healthcare Sys., 3,522 participants

97. Sw. Ret. & Cash Balance Plan, Sw. Cmty. Health Sys., 3,489 participants

98. Akron Gen. Med. Ctr. Ret. Income Plan, Akron Gen. Med. Ctr., 3,417 participants

99. Ret. Plan for Emps. of Phoebe Putney Health Sys., Inc., Phoebe Putney Health Sys., Inc., 3,394 participants

100. St. Clair Hosp. Ret. Plan, St. Clair Hosp., 3,377 participants

101. The Cooper Health Sys. Ret. Plan, The Cooper Health Sys., 3,364 participants

102. Oakwood Healthcare, Inc. Union Cash Balance Plan, Oakwood Healthcare, Inc., 3,309 participants

103. The Hosp. for Special Surgery Ret. Plan, N.Y. Society for the Relief of the Ruptured & Crippled, 3,233 participants

104. W. Md. Health Sys. Ret. Plan, W. Md. Health Sys. Corp., 3,220 participants

105. Ret. Plan for Eligible Represented Emps. of W. Penn Allegheny Health Sys., W. Penn Allegheny Health Sys., 3,219 participants

106. Ret. Plan for Emps. of Bridgeport Hosp., Bridgeport Hosp., 3,212 participants

107. Ne. Ga. Health Sys., Inc. & Affiliated Cos. Pension Plan, Ne. Ga. Health Sys., Inc., 3,148 participants

108. Bayhealth Med. Ctr., Inc. Pension Plan, Bayhealth Med. Ctr., Inc, 3,092 participants

109. New Britain Gen. Hosp. Am. & Restated Pension Plan, The Hosp. of Cent. Conn., 3,073 participants

110. Pension Plan of Anne Arundel Med. Ctr., Anne Arundel Med. Ctr. Inc. Benefits Dep't, 3,059 participants

111. E. Conn. Health Network, Inc. Pension Plan, E. Conn. Health Network, Inc., 3,025 participants

112. Cmty. Hosp. of the Monterey Peninsula Ret. Plan, Cmty. Hosp. of the Monterey Peninsula, 2,996 participants

113. MaineGeneral Health Pension Plan, MaineGeneral Health, 2,960 participants

114. S. Shore Hosp., Inc. Pension Plan, S. Shore Hosp., Inc., 2,943 participants

115. Ret. Plan for Emps. of Norwalk Hosp., Norwalk Hosp. Assoc., 2,924 participants

116. Pinnacle Health Sys. Pension Plan, Pinnacle Health Sys., 2,913 participants

117. Mary Washington Healthcare Defined Benefit Ret. Plan, Mary Washington Healthcare, 2,843 participants

118. S. Ohio Med. Ctr. Cash Balance Pension Plan, S. Ohio Med. Ctr., 2,812 participants

119. Pocono Hosp. Emps.' Ret. Plan, Pocono Med. Ctr., 2,808 participants

120. Ret. Plan for Emps. of S. Nassau Cmtys. Hosp., S. Nassau Cmtys. Hosp., 2,807 participants

121. Pension Plan of Children's Hosp. Med. Ctr. of Akron, Children's Hosp. Med. Ctr. of Akron, 2,793 participants

122. Pension Plan for the Emps. of Caromont Health, Caromont Health, Inc., 2,763 participants

123. Ret. Plan for Emps. of Highland Hosp. of Rochester, N.Y., Highland Hosp. of Rochester, 2,735 participants

124. NYU Sch. of Med. Defined Benefit Ret. Plan, NYU, 2,708 participants

125. Commonwealth Health Corp. Restated Ret. Plan, Commonwealth Health Corp., 2,694 participants

126. Hunterdon Med. Ctr. Emps.' Pension Plan, Hunterdon Med. Ctr., 2,662 participants

127. Ret. Income Plan for Emps.' of Eisenhower Med. Ctr., Eisenhower Med. Ctr., 2,638 participants

128. Tufts Med. Ctr., Inc. Ret. Program - Defined Benefit Plan, Tufts Med. Ctr., Inc., 2,578 participants

129. Licking Mem'l Hosp. Pension Plan, Licking Mem'l Hosp., 2,577 participants

130. Capital Health Pension Plan, Capital Health Sys., Inc., 2,564 participants

131. Master Trust for Emps.' Pension Plans of Butler Mem'l Hosp., Butler Healthcare Providers, 2,562 participants

132. Emps.' Ret. Plan of Raritan Bay Health, Raritan Bay Health Srvs. Corp., 2,553 participants

133. Elkhart Gen. Hosp. Emps.' Pension Plan, Mem'l Health Sys., Inc., 2,526 participants

134. The Mem'l Hosp. Defined Benefit Pension Plan & Trust, Mem'l Hosp. of Rhode Island, 2,490 participants

135. The Ret. Income Plan for Emps. of the William W. Backus Hosp., The William W. Backus Hosp., 2,471 participants

136. Frederick Mem'l Hosp., Inc. Ret. Plan, Frederick Mem'l Hosp., Inc., 2,462 participants

137. Pension Plan for Emps. of Mount Nittany Med. Ctr., Mount Nittany Med. Ctr., 2,418 participants

138. The John T. Mather Mem'l Hosp. of Port Jefferson, Inc. Pension Plan, The John T. Mather Mem'l Hosp. of Port Jefferson, Inc., 2,394 participants

139. Ret. Plan for Emps. of Cent. Me. Healthcare Corp., Cent. Me. Healthcare Corp., 2,384 participants

140. Botsford Hosp. Ret. Plan, Botsford Gen. Hosp., 2,378 participants

141. Sturdy Mem'l Hosp. Inc. Ret. Plan, Sturdy Mem'l Hosp. Inc., 2,348 participants

142. McLaren N. Mich., Emps.' Pension Plan, McLaren N. Mich., 2,324 participants

143. Sanford Health Emps.' Pension Plan, Sanford Health, 2,316 participants

144. McLaren - Bay Region Defined Benefit Pension Plan, McLaren - Bay Region, 2,281 participants

145. Boulder Cmty. Health Ret. Plan & Trust, Boulder Cmty. Health, 2,191 participants

146. Lake Forest Hosp. Emps.' Ret. Plan, Nw. Lake Forest Hosp., 2,180 participants

147. Beebe Med. Ctr. Pension Plan & Trust Agreement, Beebe Healthcare, 2,179 participants

148. McLaren - Macomb Pension Plan, McLaren - Macomb, 2,175 participants

149. Grand View Hosp. Ret. Income Plan, Grand View Hosp., 2,149 participants

150. Children's Hosps. & Clinics Rsvp Ret. Plan, Children's Hosps. & Clinics of Minn., 2,145 participants
151. Houston Hosps., Inc. Ret. Plan, Houston Hosps., Inc., 2,137 participants
152. Englewood Hosp. & Med. Ctr. Ret. Plan, Englewood Hosp. & Med. Ctr., 2,136 participants
153. Augusta Med. Ctr. Account Balance Ret. Plan, Augusta Health Care, Inc, 2,119 participants
154. Conn. Children's Med. Ctr. Cash Balance Ret., Conn. Children's Med. Ctr., 2,105 participants
155. Ret. Plan for Emps. of LRGHealthcare, LRGHealthcare, 2,092 participants
156. Union Hosp., Inc. Ret. Income Plan, Union Hosp., Inc., 2,086 participants
157. Ret. Plan for Emps. of the Valley Hosp., The Soc'y of the Valley Hosp., 2,074 participants
158. McLaren - Greater Lansing Ret. Plan, Ingham Reg'l Med. Ctr., 2,066 participants
159. Suburban Hosp., Inc. Ret. Income Plan, Suburban Hosp. Inc., 2,059 participants
160. Upper Chesapeake Health Sys., Inc. Pension Plan, Univ. of Md. Upper Chesapeake Health, 2,053 participants
161. Ret. Plan for Emps. of Yakima Valley Mem'l Hosp., Yakima Valley Mem'l Hosp., 2,045 participants
162. Boca Raton Reg'l Hosp. Emps.' Pension Plan, Boca Raton Reg'l Hosp., Inc., 2,030 participants
163. Kuakini Health Sys. Ret. Plan, Kuakini Health Sys., 2,030 participants
164. Ret. Plan for Emps. of White Plains Hosp. Med. Ctr., White Plains Hosp. Ctr. C/O Human Resource Comm., 2,017 participants

165. Finger Lakes Reg'l Health Sys. Ret. Income Plan, Finger Lakes Reg'l Health Sys., Inc., 2,009 participants

166. Bronson Battle Creek Hosp. Pension Plan, Bronson Battle Creek Hosp., 1,998 participants

167. Rockford Mem'l Hosp. Basic Pension Plan, Rockford Health Sys., 1,974 participants

168. Nw. Cmty. Hosp. Emps.' Ret. Plan, Nw. Cmty. Hosp., 1,924 participants

169. Marshall Med. Emps.' Ret. Plan, Marshall Med. Ctr., 1,920 participants

170. Emps.' Ret. Plan of Ellis Hosp., Ellis Hosp. D/B/A Ellis Medicine, 1,916 participants

171. Port Huron Hosp. Emps.' Ret. Income Plan, McLaren Port Huron, 1,892 participants

172. Tuality Healthcare Ret. Plan, Tuality Healthcare, 1,888 participants

173. Ret. Plan of Cayuga Med. Ctr. at Ithaca, Cayuga Med. Ctr. at Ithaca, 1,830 participants

174. Floyd Healthcare Mgmt., Inc. Ret. Plan, Floyd Healthcare Mgmt., Inc., 1,815 participants

175. Cash Balance Ret. Plan for Non-Union Emps. of Butler Mem'l Hosp., Butler Healthcare Providers, 1,808 participants

176. Tuomey Healthcare Sys. Emps. Ret. Plan, Tuomey Healthcare Sys., 1,799 participants

177. Signature Healthcare Ret. Plan, Brockton Hosp., Inc., 1,780 participants

178. N. Westchester Hosp. Ass'n Pension Plan, N. Westchester Hosp. Ass'n, 1,774 participants

179. Shore Mem'l Hosp. Pension Plan, Shore Med. Ctr., 1,763 participants

180. Cabell Huntington Hosp., Inc. Non-Union Emps.' Ret. Plan, Cabell Huntington Hosp., Inc., 1,762 participants

181. Marin Gen. Hosp. Ret. Plan, Marin Gen. Hosp., 1,758 participants

182. Pension Plan for Emps. of S. N.H. Med. Ctr., S. N.H. Med. Ctr., 1,756 participants

183. Somerset Med. Ctr. Ret. Plan, Robert Wood Johnson Univ. Hos., 1,702 participants

184. Exeter Health Res., Inc. Account Balance Pension Plan, Exeter Health Res., Inc., 1,680 participants

185. Cmty. Hosp. of Ind. Replacement Plan, Cmty. Health Network, Inc., 1,662 participants

186. The Children's Hosp. Ret. Plan, Children's Hosp. Colorado, 1,659 participants

187. Overlake Hosp. Med. Ctr. Cash Account Plan, Overlake Hosp. Med. Ctr., 1,657 participants

188. Cent. Vt. Med. Ctr. Emps. Pension Plan, Cent. Vt. Med. Ctr., 1,613 participants

189. Thompson Health Pension Plan, Thompson Health, 1,612 participants

190. Monongalia Health Sys., Inc. Ret. Plan, Monongalia Health Sys., Inc., 1,600 participants

191. Martin Mem'l Health Sys., Inc. Pension Plan, Martin Mem'l Health Sys., Inc, 1,594 participants

192. Adena Health Sys. Ret. Plan, Adena Health Sys., 1,594 participants

193. Ret. Income Plan for Emps. of N. Ariz. Healthcare, N. Ariz. Healthcare, 1,579 participants

194. Monongahela Valley Hosp., Inc. Ret. Income Plan, Mon Vale Health Res. Inc. Monongahela Valley Hosp., Inc., 1,566 participants

195. Beloit Health Sys., Inc. Ret. Plan, Beloit Health Sys., Inc., 1,555 participants

196. MidState Med. Ctr. Ret. Plan, MidState Med. Ctr., 1,529 participants

197. AOMC Pension Plan for Non Union Emps., Arnot Ogden Med. Ctr., 1,507 participants

198. Prince William Hosp. Corp. Cash Balance Plan, Prince William Hosp. Corp., 1,469 participants

199. Waterbury Hosp. Cash Balance Ret. Plan, Waterbury Hosp., 1,464 participants

200. The Charlotte Hungerford Hosp. Ret. Plan, The Charlotte Hungerford Hosp., 1,460 participants

201. Cmty. Mem'l Hosp. Ret. Plan, Froedtert Health, Inc., 1,457 participants

202. N.Y. Eye and Ear Infirmary Emps.' Pension Plan, N.Y. Eye and Ear Infirmary, 1,447 participants

203. Underwood-Mem'l Hosp. Cash Balance Ret. Plan, Inspira Med. Ctr. Woodbury, 1,447 participants

204. The Rutland Hosp., Inc. Ret. Income Plan, Rutland Reg'l Med. Ctr., 1,446 participants

205. Frozen Pension Plan & Trust for Emps. of the Bronx-Lebanon Hosp. Ctr., The Bronx-Lebanon Hosp. Ctr., 1,446 participants

206. San Antonio Reg'l Hosp. Ret. Plan, San Antonio Reg'l Hosp., 1,433 participants

207. Carroll Hosp. Ctr., Inc. Ret. Income Plan, Carroll Hosp. Ctr., Inc., 1,398 participants

208. Ret. Plan for Emps. of Mercy Mem'l Hosp. Corp., Mercy Mem'l Hosp. Corp., 1,385 participants

209. Camden Clark Med. Ctr. Cash Plus Plan, Camden Clark Med. Ctr., 1,379 participants

210. Cape Reg'l Health Sys., Inc. Pension Plan, Cape Reg'l Med. Ctr., 1,375 participants

211. Twin City Hosps. Pension Plan for Licensed Practical Nurses, Joint Hosps. Pension Bd., 1,372 participants

212. Emps.' Ret. Plan of Robert Wood Johnson Univ. Hosp. Rahway, Robert Wood Johnson Univ. Hosp. Rahway, 1,352 participants

213. The Univ. of Md. Charles Reg'l Med. Ctr. Ret. Plan and Trust, The Univ. of Md. Charles Reg'l, 1,343 participants

214. Putnam Hosp. Ctr. Ret. Plan, Putnam Hosp. Ctr., 1,296 participants

215. Cabell Huntington Hosp., Inc. Union Emps.' Ret. Plan, Cabell Huntington Hosp. Inc., 1,295 participants

216. Doctors Cmty. Hosp. Cash Balance Pension Plan and Trust, Doctors Cmty. Hosp., 1,291 participants

217. Medisys Health Network, Inc. Cash Balance Ret. Plan, Medisys Health Network, Inc., 1,288 participants

218. Salem Cmty Hosp. Ret. Plan, Salem Cmty. Hosp., 1,279 participants

219. Ret. Plan for Emps. of General Health Sys. and Its Affiliates, General Health Sys., 1,267 participants

220. North Mem'l Health Care Pension Plan, North Mem'l Health Care, 1,253 participants

221. Burke Rehab. Hosp. Ret. Plan, Burke Rehab. Hosp., 1,250 participants

222. Pension Plan for the Emps. of Rowan Reg'l Med. Ctr., Rowan Reg'l Med. Ctr., Inc., 1,239 participants

223. Vassar Bros. Hosp. Pension Plan, Vassar Brothers Med. Ctr., 1,235 participants

224. Pension Plan for Emps. of the Bronx-Lebanon Hosp. Ctr., Bronx-Lebanon Hosp. Ctr., 1,221 participants

225. Marietta Mem'l Hosp. Ret. Plan, Marietta Mem'l Hosp., 1,219 participants

226. The Kennedy Krieger Inst. Pension Plan, The Kennedy Krieger Inst., 1,213 participants

227. Tuality Healthcare Cash Balance Pension Plan, Tuality Healthcare, 1,212 participants

228. Pension Plan of Morehead Mem'l Hosp., Morehead Mem'l Hosp., 1,205 participants

229. Sw. Vt. Health Care Corp. Pension Plan, Sw. Vt. Health Care Corp., 1,204 participants

230. Palisades Med. Ctr. Pension Plan, Hackensack UMC Palisades, 1,165 participants

231. McLaren-Lapeer Region Ret. Plan, McLaren-Lapeer Region, 1,155 participants

232. Univ. of Md. Med. Ctr. Midtown Campus Ret. Plan for Non-Union Emps., Md. Gen. Hosp., Inc. D/B/A UMMC Midtown Campus, 1,143 participants

233. Nationwide Children's Hosp. Pension Plan, Nationwide Children's Hosp., Inc., 1,135 participants

234. Weirton Med. Ctr. Ret. Income Plan, Weirton Med. Ctr., 1,121 participants

235. Ohio Valley Health Servs. & Educ. Corp. Pension Plan, Ohio Valley Health Servs. & Educ. Corp., 1,085 participants

236. Guthrie Ret. Plan, The Guthrie Clinic, 1,081 participants

237. Jackson Hosp. & Clinic, Inc. Emps.' Ret. Plan, Jackson Hosp. & Clinic, Inc., 1,069 participants

238. Reid Hosp. & Health Care Servs., Inc. Emps.' Ret. Plan, Reid Hosp. & Health Care Servs., Inc., 1,068 participants

239. Armstrong Cty. Mem'l Hosp. Ret. Income Plan, Armstrong Cty. Mem'l Hosp., 1,059 participants

240. The Children's Hosp. of Phila.Pension Plan for Union-Represented Emps. Hired After July 1, 2000, The Children's Hosp. of Phila., 1,050 participants

241. St. Marys Hosp. of St. Marys County Pension Plan and Trust, St. Marys Hosp. of St. Marys Cty., Inc., 1,039 participants

242. Defined Benefit Pension Plan of Nyack Hosp., Nyack Hosp., 1,022 participants

243. Wood County Hosp. Ret. Plan, Wood County Hosp., 1,018 participants

244. Bayshore Cmty. Hosp. Emps.' Ret. Plan, Bayshore Cmty Hosp., 1,017 participants

245. Noland Health Servs. Ret. Income Plan, Noland Health Servs., Inc., 1,009 participants

246. The Russell Med. Ctr. Ret. Plan, Russell Med. Ctr., 1,001 participants

247. The Oswego Hosp. Ret. Plan, Oswego Hosp., Inc., 979 participants

248. Norwegian Am. Hosp. Ret. Plan, Norwegian Am. Hosp., 967 participants

249. Lawrence & Mem'l Hosp. Pension Plan, Lawrence & Mem'l Hosp. Inc., 957 participants

250. Sanford Bismarck Emps.' Ret. Plan (QR), Sanford Bismarck, 955 participants

251. Deborah Heart and Lung Ctr. Pension Plan, Deborah Heart and Lung Ctr., 930 participants

252. Wyo. Med. Ctr. Pension Plan, Wyo. Med. Ctr., 920 participants

253. Ret. Plan for Emps. of Windham Cmty. Mem'l Hosp., Windham Cmty. Mem'l Hosp., 919 participants

254. Harrington Mem'l Hosp. Ret. Plan, Harrington Mem'l Hosp., 899 participants

255. Corning Hosp. Pension Plan, Corning Hosp., 864 participants

256. Calvert Mem'l Hosp. Pension & Savings Plan, Calvert Mem'l Hosp., 847 participants

257. Chenango Mem'l Hosp. Emps.' Pension Plan, Chenango Mem'l Hosp., 838 participants

258. Virginia Mason Med. Ctr. Defined Benefit Ret. Plan, Virginia Mason Med. Ctr., 808 participants

259. Ret. Plan for Emps. of Canton-Potsdam Hosp., Canton-Potsdam Hosp., 793 participants

260. Randolph Hosp. Ret. Plan, Randolph Hosp., Inc., 770 participants

261. Hallmark Health Corp. Defined Benefit Pension Plan, Hallmark Health Corp., 767 participants

262. Ret. Plan for Emps. of Parkview Cmty. Hosp. Med. Ctr., Parkview Cmty. Hosp. Med. Ctr., 755 participants

263. Cash Balance Ret. Plan for Registered Nurses, Butler Healthcare Providers, 733 participants

264. Johns Hopkins Bayview Med. Ctr., Inc. Represen Emps. Pension Plan, Johns Hopkins Bayview Med. Ctr., Inc., 733 participants

265. Jersey City Med. Ctr. Pension Plan, Jersey City Med. Ctr., 729 participants

266. Gnaden Huetten Mem'l Hosp. Emps. Pension Plan, Gnaden Huetten Mem'l Hosp., 705 participants

267. Carrier Clinic Pension Plan, Carrier Clinic, 675 participants

268. Wayne Mem'l Hosp. Pension Plan, Wayne Mem'l Hosp., 675 participants

269. Lakeview Mem'l Hosp. Ass'n, Inc. Emps.' Pension Plan, Lakeview Mem'l Hosp. Ass'n ,Inc., 673 participants

270. Pension Plan for Emps. of York Hosp., York Hosp., 657 participants

271. Emps.' Ret. Plan of Galion Cmty. Hosp., Galion Cmty. Hosp., 655 participants

272. Harnett Health Sys., Inc. Emps.' Pension Plan, Harnett Health Sys., Inc., 654 participants

273. J.C. Blair Mem'l Hosp. Ret. Plan, J.C. Blair Mem'l Hosp., 610 participants

274. Sturgis Hosp., Inc. Ret. Plan, Sturgis Hosp., Inc., 608 participants

275. Porter Med. Ctr., Inc. Pension Plan, Porter Med. Ctr., Inc., 591 participants

276. The Geisinger-Bloomsburg Hosp. Emps.' Pension Plan, Geisinger-Bloomsburg Hosp., 587 participants

277. Ret. Plan for Emps. of Range Reg'l Health Servs., Range Reg'l Health Servs., 581 participants

278. Decatur Mem'l Hosp. Ret. Plan, Decatur Mem'l Hosp., 567 participants

279. Cent. Suffolk Hosp. Emps. Pension Plan, Cent. Suffolk Hosp., 556 participants

280. Mary Lanning Mem'l Hosp. Ret. Plan, Mary Lanning Mem'l Hosp., 555 participants

281. La Rabida Emps. Ret. Plan, La Rabida Children's Hosp., 552 participants

282. Ret. Plan for Emps. of Ellwood City Hosp., The Ellwood City Hosp., 542 participants

283. Arnot-Ogden Med. Ctr. Pension Plan for AFL-CIO Local 1111, Arnot Ogden Med. Ctr., 522 participants

284. Ret. Plan for Emps. of Bradley Mem'l Hosp. and Health Ctr., The Hosp. of Cent. Conn., 518 participants

285. NCMC Emps.' Pension Plan, NCMC, Inc., 518 participants

286. Pension Plan for Emps. of Chinese Hosp., Chinese Hosp., 498 participants

287. Ret. Plan for Emps. of Charles Cole Mem'l Hosp., Charles Cole Mem'l Hosp., 486 participants

288. Jones Mem'l Hosp. Pension Plan, Jones Mem'l Hosp., 482 participants

289. Ret. Plan for Emps. of Highlands Hosp., Highlands Hosp., 479 participants

290. Lakeside Mem'l Hosp. Inc. Ret. Plan, Lakeside Mem'l Hosp. Inc., 473 participants

291. Emps.' Ret. Plan of Gaylord Hosp., Inc., Gaylord Hosp., Inc., 465 participants

292. Pension Plan for the Emps. of Halifax Reg'l Hosp., Inc., Halifax Reg'l Hosp., Inc., 461 participants

293. The Defined Benefit Ret. Plan for Scott & White Hosp. Brenham, Scott & White Hosp. Brenham, 460 participants

294. Ret. Plan for Emps. of Southampton Hosp. Ass'n, Southampton Hosp. Ass'n, 430 participants

295. Nicholas H. Noyes Mem'l Hosp. Emps.' Ret. Plan, Nicholas H. Noyes Mem'l Hosp., 415 participants

296. Columbia Park Med. Grp. Pension Plan, Fairview Health Services, 383 participants

297. Henry Ford Med. Ctr. Union Facilities Ret. Plan for Collectively Bargained Emps., Henry Ford Health Sys., 371 participants

298. Pension Plan for Emp. of Shenandoah Mem'l Hosp., Shenandoah Mem'l Hosp., Inc, 369 participants

299. The Children's Hosp. of Phila. Pension Plan for Union-Represented Emps. Hired Before July 1, 2000, The Children's Hosp. of Phila., 357 participants

300. Ret. Plan for Huntsville Mem'l Hosp., Huntsville Mem'l Hosp., 356 participants

301. Ret. Plan for Emps. of Fisher-Titus Med. Ctr., Fisher-Titus Med. Ctr., 355 participants

302. Little Falls Hosp. Emp. Ret. Plan, Little Falls Hosp., 355 participants

303. Cmty. Hosp. of the Monterey Peninsula Cash Balance Plan, Cmty. Hosp. of the Monterey Peninsula, 354 participants

304. Chester River Health Sys., Inc. Pension Plan & Trust, Chester River Hosp. Ctr., Inc, 350 participants

305. Cmty. Mem'l Hosp., Inc. Ret. Income Plan, Cmty. Mem'l Hosp., 316 participants

306. Jersey Shore Hosp. Ret. Income Plan, Jersey Shore Hosp., 316 participants

307. Emps.' Ret. Plan of Columbia Mem'l Hosp., Columbia Mem'l Hosp., 308 participants

308. Ret. Plan for Emps. of Pomona Valley Hosp. Med. Ctr., Pomona Valley Hosp. Med. Ctr., 276 participants

309. Carson City Hosp. Hourly & Salaried Emps.' Ret. Plan, Carson City Hosp., 271 participants

310. W. Ga. Med. Ctr., Inc. Ret. Plan, W. Ga. Med. Ctr., Inc., 260 participants

311. Cobre Valley Cmty. Hosp. Ret., Cobre Valley Cmty. Hosp., 254 participants

312. Ret. Plan for Emps. of Sanford Health of N. Minn., Sanford Health of N. Minn., 241 participants

313. Froedtert Hosp. Ret. Plan for Certain Former Milwaukee Cty. Emps., Froedtert Health, Inc., 237 participants

314. Brooks Mem'l Hosp. Union Emps.' Pension Plan, Brooks Mem'l Hosp., 236 participants

315. Barnesville Hosp. Ass'n, Inc. Ret. Plan, Barnesville Hosp. Ass'n, Inc., 230 participants

316. Preston Mem'l Hosp. Corp. Ret. Plan, Preston Mem'l Hosp. Corp., 222 participants

317. Jackson Park Hosp. Found. Pension Plan, Jackson Park Hosp. Found., 221 participants

318. Schuyler Hosp. Emps.' Ret. Income Plan, Schuyler Hosp., 217 participants

319. Detroit Osteopathic Hosp. Corp. Ret. Income Plan, Henry Ford Health Sys., 213 participants

320. Riverside Med. Ctr. Emp.'s Defined Benefit Pension Plan, Fairview Health Servs., 212 participants

321. Greenville Hosp. Pension Plan, Greenville Hosp., 201 participants

322. Lucile Salter Packard Children's Hosp. at Stanford Pension Plan, Lucile Salter Packard Children's Hosp. at Stanford, 201 participants

323. Howard Cty. Gen. Hosp., Inc. Cash Balance Pension Plan, Howard Cty. Gen. Hosp., Inc., 198 participants

324. Pension Plan for the Emps. of Highland Hosp. Ass'n, Highland Hosp. Ass'n, 192 participants

325. Dunlap Cmty. Hosp. Emps.' Pension Plan, Orrville Hosp. Found., 179 participants

326. The HSC Health Care Sys. Cash Balance Plan, HSC Pediatric Ctr., 168 participants

327. Straith Hosp. for Special Surgery Pension Plan, Straith Hosp. for Special Surgery, 153 participants

328. Nathan Littauer Hosp. & Nursing Home Registered Nurses Plan, Nathan Littauer Hosp. Ass'n, 141 participants

329. Pension Plan of Aurelia Osborn Fox Mem'l Hosp., Aurelia Osborn Fox Mem'l Hosp., 132 participants

330. Good Shepherd Penn Partners Defined Benefit Pension Plan, Phila. Post-Acute Partners, LLC, 109 participants

331. Int'l Falls Mem'l Hosp. Ass'n Emps.' Pension Plan, Rainy Lake Med. Ctr., 105 participants

332. The Children's Hosp. Corp. Maintenance Emps. Pension Plan, The Children's Hosp. Corp., 91 participants

333. Pension Plan for Days Pay Emps. Cobre Valley Cmty. Hosp., Cobre Valley Cmty. Hosp., 49 participants

334. Ret. Plan for Emps. of H.H.M.O.B. Corp., H.H.M.O.B. Corp., 38 participants

335. Cash Balance Ret. Plan for Maintenance Emps., Butler Healthcare Providers, 21 participants

336. League of Voluntary Hosps. & Homes of N.Y. Health Serv. Ret. Plan, League of Voluntary Hosps. and Homes of N.Y., 11 participants